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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 118

JOSEPH BEAUHARNAIS, PETITIONER,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED JUNE 15, 1951.

CERTIORARI GRANTED OCTOBER 8, 1951.

SUPREME COURT OF THE UNITED STATES

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[fol. 1] [File endorsement omitted]

IN THE SUPREME COURT OF ILLINOIS, SEPTEMBER TERM, A. D. 1950

Appeal from the Municipal Court of Chicago

Honorable Joseph H. McGarry, Judge Presiding

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

vs.

JOSEPH BEAUHARNAIS, Defendant-Appellant.

Abstract of Record—Filed August 19, 1950

INFORMATION

Placita.

Information filed January 7, 1950 that on January 7, 1950 defendant unlawfully published a lithograph, etc.

Motion to quash complaint.

Order of March 5, 1950 granting leave to file amended information.

AMENDED INFORMATION

Amended information filed March 6, 1950. Alleges that the defendant on January 7, 1950, at the City of Chicago, [fol. 2] did unlawfully publish, present and exhibit in public places lithographs, which publications portray depravity, criminality, unchastity or lack of virtue of citizens of Negro race and color and which exposes citizens of Illinois of the Negro race and color to contempt, derision, or obloquy, which more fully appears in Exhibit A, which is attached hereto and made a part hereof. (Said Exhibit A is the same as Exhibit 3 introduced in the trial record 83 and appears herein at page 83 of the record).

VERDICT OF JURY

May 4, 1950, verdict of the jury finding defendant guilty and fining him $200.00 and the judgment of the court that said defendant is guilty of the criminal offense of violation of Paragraph 471, Chapter 38, Illinois Revised Statutes,

1945, on said verdict of guilty, and assessing a fine of $200.00 against defendant and costs of $6.00.

Motion for new trial entered and continued to May 5, 1950. Bail increased to $400.00 cash. Individual bond.

May 4, 1950, verdict of guilty against defendant and $200.00 fine signed by the foreman and eleven jurors.

JUDGMENT

May 12, 1950, order of court: motion for judgment notwithstanding the verdict overruled. Judgment on verdict. Motion in arrest of judgment prayed and overruled. Appeal bond $400.00. Bond approved and ordered filed. Bill of exceptions to be filed in ninety days.

May 4, 1950, bond in the sum of $400.00 filed.

May 12, 1950, stay bond in the sum of $400.00 with Maryland Casualty Company as surety, approved and filed.

[fol. 3] NOTICE OF APPEAL

May 16, 1950, notice of appeal from the Municipal Court of Chicago to the Supreme Court of Illinois (and proof of service) that said judgment be reversed.

May 25, 1950, stipulation to incorporate the original transcript of evidence in lieu of a copy thereof in the record on appeal.

May 25, 1950, praecipe for record and proof of service.

Order of July 13, 1950 that the report of proceedings herein be approved and ordered filed.

REPORT OF PROCEEDINGS

Report of proceedings.

Report of proceedings at the trial of this cause before Judge Joseph H. McGarry, Judge of said Court, and a jury.

Present: Mr. Albert I. Zemel for the People and Mr. Maximilian J. St. George for defendant.

Opening statement by Mr. Zemel.

IVON HENRI LATIMER, testified for the people as follows:

My name is Ivon Henri Latimer. I live at 5031 Dorchester. I am a student at the University of Chicago,

second year of college, taking a liberal arts program. I met defendant the first time in the evening of January 6, 1950, at a meeting of the White Circle League called for eight o'clock. I heard about it over at school and I wanted to see what it was. I went there alone. The meeting was held in the Woodlawn Boys Club, 64th and University. At the door there was a young man who gave me a card 3 x 5, to put my name on and told me to give it to Mr. Beauharnais when I had filled it out with my name and address and phone number. I went to the table and met [fol. 4] Mr. Beauharnais who read off my name, Hank Latimer, and the address and telephone number. I shook his hand and he told me to sit on the right hand side of the room where seats were lined up. There were about 35 to 40 people there. Mr. Beauharnais spoke. He opened the meeting. He introduced himself as Joseph Beauharnais, president and founder of the White Circle League of America, that this was not a regular meeting of the league but a meeting for volunteers who would distribute literature and get these petitions signed on the following day. This was a Friday night and he wanted people to work on Saturday, standing on the street corner and he assigned every one a street corner. He took the 3 x 5 cards and called out people's names one by one and he gave them a pack of literature which contained 500 leaflets. He asked for volunteers to distribute literature. When he called the names of the people, he asked them to raise their hands to see who would volunteer. He asked what neighborhoods people would distribute them in. He said he wanted the loop area first and he asked the people whether they would take specific corners in the loop. I volunteered. He asked me if I would take Randolph and Michigan. I am not sure, but he finally assigned me to Monroe and Clark—I believe it was Monroe and Adams. It is written down. He wrote down the streets. He gave me a pack of literature containing 500 lithographs, with room for 25 names on each petition form.

People's Exhibit #1 for identification was given to me at that meeting. This is the same petition. He instructed each of the volunteers to sign their name at the top, when the petition was completed. He told us what the petition

was for. He said that this was to save and protect white neighborhoods. He did not explain what he meant by that. [fol. 5] He said that the literature of the White Circle League tells this, that if any one asks what the petition is about, you show them the placard. I was given two placards: one for the back and one for the front, with pins in them which said "Protect White Neighborhoods," I believe. I believe that is the placard there. That is the same placard, same sort of placard. He told us to wear one on the front, sort of like a bathing beauty contest, and one on the back when we passed out the literature. We were to pass out literature all day Saturday and when we got tired we should go home, but he would like to have us work six, seven, eight hours, and he wanted every one to start at nine o'clock in the morning on their street corner. He also gave us 500 leaflets.

Defendant's Exhibit 3 for identification is one of the leaflets he gave us at that meeting, I believe. I am not absolutely sure this was the one. I know it was either one or the other of these leaflets. Mr. Beauharnais wrote the handwriting on the corner of the binder before handing me the packet. He wrote down on it that I was to take Dearborn and Monroe, the corner I was to take. Dearborn and Monroe is written Randolph and Michigan. I told him that Randolph and Michigan was not as busy a corner as Dearborn and Monroe and he said, "Well then you take Dearborn and Monroe," and he wrote that down, and then he gave me the whole packet of literature consisting of this binder. He told us these petitions should be filled out; that when people walked by along the street you are to ask them if they would like to sign this petition. If they ask what it is about you point to your placard, this placard, and to tell them that it is to preserve and protect white neighborhoods, [fol. 6] that if they want to know the purpose of the league and what the campaign is, you are to give them one of the leaflets. I believe that was the leaflet, but I am not sure. It was either that leaflet or another one signed by him at the bottom. (Counsel pointed to Exhibit 3 for identification).

Maybe you should put the State's Attorney on the stand, because he had the packet. Yes, those are the leaflets.

The Court: Now you say that is the leaflet?

The Witness: Yes, definitely.

Mr. Beauharnais said we should not talk to people while we are getting the petition signed, if they wanted to know what the White Circle League is about, what this petition campaign was about, we were to give them one of the leaflets that would explain it and if they decided that they didn't want to sign after reading the leaflet, we were to get the leaflet back. If they did sign the petition then we could give them a leaflet. You should give them a leaflet once they signed the petition. He also said that we shouldn't collect any memberships at all, collect any money. We should not collect any money for memberships. We shouldn't collect any money at all. Beauharnais said that if a Negro came up to any one getting the petition signed, he should not let the Negro sign this. Mr. Beauharnais also said "We don't want any violence while these petitions are being passed out; we just want to get a lot of signatures and we want to get a lot of people to see our literature, and we want to get a large number of members." He said that the membership was in the thousands. He couldn't say how many; that they wanted other people, other groups to think that it was ten or twenty times as large as it is. He said the dues were $1.00, I guess for a year. He also said that those getting the signatures should not let a crowd [fol. 7] gather, shouldn't disrupt the movement of people on the sidewalk.

No one except Mr. Beauharnais got up and talked. He gave a very short speech and started giving people the packets and after he got through with that he asked for questions and people asked a lot of questions about what they should do. He said that if a policeman inquired, then we should show him a letter in the packet "To whom it may concern". The letter I am referring to is the letter that was given to me. He said that the legal department of the White Circle League had called the police department and asked if these petitions could be passed out. He did not say who his legal department was. The meeting adjourned about 9:50, 9:30 or 9.45.

Beauharnais took each of the pieces of literature out of the packet and showed them to the people. No one read it out loud. I do not believe any one got a chance to read it at

the meeting because people were asking him a lot of questions about how they should distribute. The meeting adjourned about 9:45. I took all my paraphernalia and left.

There were about four or five maybe six plain clothes policemen—not quite that many—two downstairs, that is on the second floor as I came up and there were a couple I guess on the third floor, and three or four uniformed police. And there was also a reporter from the Bridgeport News, and some one said that there was a man there from the Tribune. All that I have testified to happned, in the City of Chicago, County of Cook, State of Illinois.

Cross-examination of Mr. Latimer.

By Mr. St. George:

I went over to this meeting to observe for myself what this organization was. I hate the communist party. I [fol. 8] learned about this meeting at the University of Chicago. I heard some people discussing the meeting. One of these was Marcus Goff, a friend of mine. Another one I think was a guy named Bob Blauner. Both were university students.

That is not the first time I heard about the White Circle. I heard about it before at home from my father, Ira Latimer, the executive director of the Chicago Liberties Committee. I gave this package of material not to the State's Attorney's office but to my father. I know what he did with it. He took it to the State's Attorney's office. I did not go with him, so actually I do not know whether he took it to the State's Attorney's office.

I read all the literature before I gave it to my father and then I gave it to him. I believe he read it in my presence. He read parts, looked at it for about twenty minutes, and we talked about it for quite a while during that time. He was talking to me while he was looking at it and I think this took about an hour and fifteen minutes, something like that.

At the meeting I do not know whether I signed the card or not; I think I printed my name at the top so that they could read it and at that time I had some idea it was for a petition campaign. My father came home that night about 12 o'clock. It was Friday night, January 6th.

At the meeting I had no opportunity to look at this literature. During the meeting I looked at it. I did not get a chance to read it. At the meeting I read the letter "To whom it may concern". The literature was handed to us during the meeting.

After the literature was distributed they had a question period which lasted probably a half an hour. I was listening to the questions, and up to that time I had no op- [fol. 9] portunity to examine the literature at the meeting. I did not have time to fully, carefully read it. I did not get a chance to read the leaflet which was the most important thing. People's Exhibit 2, for identification, was in the packet. I pulled all the stuff out to look at it. I also glanced at People's Exhibit 3, which came in an envelope, I believe, and People's Exhibit 1, for identification.

I did not go out the next morning to distribute the literature.

Q. So as a matter of fact the only purpose you had in going to that meeting was in getting some goods on Beauharnais?

Mr. Zemel: I object to that.
The Court: Objection sustained.

I believe I learned at the meeting that the White Circle League of America was a corporation.

Q. And you knew the purpose of its organization?

Mr. Zemel: I object.
The Court: Sustained.

I did not know that that meeting was called by special invitation. No one asked me for an invitation, for a membership card or anything. The boy just gave me a card. I did not hear anything about the invitation to the meeting going to members only.

Q. Didn't your father tell you about this meeting?

Mr. Zemel: I object.
The Court: Sustained.

I think there were plainclothes men at this meeting. They looked like plainclothes men. They looked like policemen. Some had uniforms, some didn't. Those without uniforms I thought were plainclothes men. The uniform

men were on the third floor where the meeting was, right in front of the door, about three or four of them. There [fol. 10] were about four or five detectives; only two on the second floor and none on the first floor. On the first floor they had their regular Friday night dance.

Mr. Beauharnais asked me where I wanted to work and I said in the loop. He started to assign me to Randolph and Michigan. I told him that Randolph and Michigan was not a busy corner. I thought this was an organization for the betterment of the community and that I would work on Dearborn and Monroe. I said I would take that corner. I did not work. I was not paid, nor was I promised any pay for distributing this literature. I do not know whether it was from Mr. Goff or from my father that I first heard about this meeting. I don't remember whether I heard about this meeting from my father or from the boys at school first. They were the ones where I heard where it was going to be and the time and that information. I do not know whether the boys received an invitation. We just talked about a meeting.

CLIFFORD MCFARLAND testified for the people as follows:

My name is Clifford McFarland. I live at 4142 South Park. I am employed by my father's restaurant at 55th and South Park three days a week and in a haberdashery store the latter three days of the week.

Thereupon, over objection of counsel for defendant, the court allowed in evidence People's Exhibits 1, 2 and 3, for identification, as People's Exhibits 1, 2 and 3.

People's Exhibit 1 is as follows:

[fol. 11] PEOPLE'S EXHIBIT 1

The White Circle League of America, Inc.
Chicago 2, Phone Franklin 2-8533.

"Dedicated to protest and maintain the Dignity, Social Edicts, Customs and Rights of the White Races in America".

Petition

To the Honorable Martin H. Kennelly and City Council of the City of Chicago:

Whereas, the white population of the City of Chicago, particularly on the South Side of said city, are seething, nervous and agitated because of the constant and continuous invasion, harassment and encroachment by the Negroes upon them, their property and neighborhoods and—

Whereas, there have been disastrous incidents within the past year, all of which are fraught with grave consequences and great danger to the Peace and Security of the people, and

Whereas, there is great danger to the Goyernment from communism which is rife among the Negroes, and

Whereas, we are not against the negro; we are for the white people and the white people are entitled to protection:—

We, the undersigned white citizens of the City of Chicago and the State of Illinois, hereby petition the Honorable Martin H. Kennelly, Mayor of the City of Chicago and the Alderman of the City of Chicago, to halt the further encroachment, harassment and invasion of white people, their property, neighborhoods and persons, by the Negro— [fol. 12] through the exercise of the Police Power; of the Office of the Mayor of the City of Chicago, and the City Council.

Address

(The person securing these petitions should sign on above line).

There follows 25 lines for names.

(When filled, mail to White Circle League of America, Inc.—Suite 808—82 W. Washington St., Chicago 2, Illinois)

People's Exhibit 2

People's Exhibit 2 is a placard with the following words in large type, "Preserve and Protect White Neighborhoods. Sign Petition Here Sponsored by the White Circle League of America".

(Here follows 1 Photolithograph, side folio 13).

PRESERVE and PROTECT WHITE NEIGHBORHOODS!

FROM THE CONSTANT AND CONTINUOUS INVASION, HARASSMENT AND ENCROACHMENT BY THE NEGROES

(WE WANT TWO MILLION SIGNATURES OF WHITE MEN AND WOMEN)

PETITION
To The Honorable Martin H. Kennelly
and City Council of the City of Chicago.

WHEREAS, the white population of the City of Chicago, particularly on the South Side of said city, are seething, nervous and agitated because of the constant and continuous invasion, harassment and encroachment by the Negroes upon them, their property and neighborhoods and —

WHEREAS, there have been disastrous incidents within the past year, all of which are fraught with grave consequences and great danger to the Peace and Security of the people, and

WHEREAS, there is great danger to the Government from communism which is rife among the Negroes, and
WHEREAS, we are not against the negro; we are for the white people and the white people are entitled to protection: —

We, the undersigned white citizens of the City of Chicago and the State of Illinois, hereby petition the Honorable Martin H. Kennelly, Mayor of the City of Chicago and the Alderman of the City of Chicago, to halt the further encroachment, harassment and invasion of white people, their property, neighborhoods and persons, by the Negro — through the exercise of the Police Power; of the Office of the Mayor of the City of Chicago, and the City Council.

WANTED

ONE MILLION SELF RESPECTING WHITE PEOPLE IN CHICAGO TO UNITE UNDER THE BANNER OF THE WHITE CIRCLE LEAGUE OF AMERICA to oppose the National Campaign now on and supported by TRUMAN'S INFAMOUS CIVIL RIGHTS PROGRAM and many Pro Negro Organizations to amalgamate the black and white races with the object of mongrelizing the white race!

THE WHITE CIRCLE LEAGUE OF AMERICA is the only articulate white voice in America being raised in protest against negro agressions and infiltrations into all white neighborhoods. The white people of Chicago MUST take advantage of this opportunity to become UNITED. If persuasion and the need to prevent the white race from becoming mongrelized by the negro will not unite us, then the aggressions . . . rapes, robberies, knives, guns and marijuana of the negro, SURELY WILL.

The Negro has many national organizations working to push him into the midst of the white people on many fronts. The white race does not have a single organization to work on a NATIONAL SCALE to make its wishes articulate and to assert its natural rights to self-preservation. THE WHITE CIRCLE LEAGUE OF AMERICA proposes to do the job.
WE ARE NOT AGAINST THE NEGRO! WE ARE FOR THE WHITE PEOPLE!
We must awaken and protect our white families and neighborhoods before it is too late. Let us work unceasingly to conserve the white man's dignity and rights in America.

THE WHITE CIRCLE LEAGUE OF AMERICA, INC. - Joseph Beauharnais, Pres. - FR 2-8533, Suite 808, 82 W. Washington St.
VOLUNTEERS NEEDED TO GET 25 SIGNATURES ON PETITION! COME TO HEADQUARTERS!

I wish to be enrolled as a member in THE WHITE CIRCLE LEAGUE OF AMERICA and I will do my best to secure ten (10) or more members.

THE FIRST LOYALTY OF EVERY WHITE PERSON IS TO HIS RACE. ALL THE COMBINED PRO NEGRO FORCES HAVE HURLED THEIR ULTIMATUM INTO THE FACES OF THE WHITE PEOPLE. WE ACCEPT THEIR CHALLENGE.

THEY CANNOT WIN!

IT WILL BE EASIER TO REVERSE THE CURRENT OF THE ATLANTIC OCEAN THAN TO DEGRADE THE WHITE RACE AND ITS NATURAL LAWS BY FORCED MONGRELIZATION.

THE HOUR HAS STRUCK FOR ALL NORMAL WHITE PEOPLE TO STAND UP AND FIGHT FOR OUR RIGHTS TO LIFE, LIBERTY AND THE PURSUIT OF HAPPINESS.

JOSEPH BEAUHARNAIS.

APPLICATION FOR 1950 MEMBERSHIP
THE WHITE CIRCLE LEAGUE OF AMERICA, INC.
(Not For Profit)

Mail To —
THE WHITE CIRCLE LEAGUE OF AMERICA Inc.
82 W. Washington St.
Chicago 2, Illinois
Tel. FR 2-8533

DATE _____ **19**____

- ☐ **Membership** ____ **$1.00**
- ☐ **Subscripton to Monthly Magazine (WHITE CIRCLE NEWS) per year** ____ **$3.00**
- ☐ **Voluntary Contribution $**_____
- ☐ **I can volunteer some of my time to aid the WHITE CIRCLE in getting under way.**

(SIGNED) (Print Name) _____
NAME _____
ADDRESS _____ **PHONE** _____
CITY _____ **STATE** _____
(Note: Tear Off and Mail to Headquarters wth Your Remittance)

[fol. 14] On January 7, 1950, I saw this sign, Exhibit 2, on a man standing on the corner of State and Madison. The sign was across the front. I only saw one. I came out of the subway on the southwest side; this man, who wore this sign, and two other fellows were talking—one appeared to be signing something, giving a pencil back. I didn't see a thing what he was signing. It didn't resemble this (indicating) from a distance.

I went up to that man, a man in front of me met this fellow first and he made a motion, made a couple of steps toward him with this package in his arm and loose sheet in his hand. This (Exhibit 3) resembles the sheet in his hand. That is what I saw.

The man who met him before I did didn't stop. He just lifted this sheet out of his hand and began to walk going north on State. When I walked up to the man with the sign he didn't see me—when he turned around he made a motion with his bag in his arm towards me and then pulled it back and walked away and said that I wouldn't be interested.

The man who was in front of me had crossed the street by that time and he looked back in our direction and sort of dropped this sheet to the street. I ran across the street and picked it up and went in the drug store and had a cup of coffee. The sheet that I picked up is the same as People's Exhibit 3. It is the same thing.

I picked up the sheet, went in the drug store and had a cup of coffee and read it carefully and completely.

After reading it completely and thoroughly, and finding out its contents, I reported it to the Chicago Civil Liberties Committee.

Some time thereafter I signed this information which bears my signature. I signed it at 11th Street Court [fol. 15] before Judge Gutknecht. All this I testified to happened in the City of Chicago, County of Cook, State of Illinois.

Cross-examination of Mr. McFarland.

By Mr. St. George:

The amended complaint bears my signature. I signed it before Judge McGarry. I am sure that Exhibit 2 is the

exact item I saw on the chest of this man distributing the literature. It was like that; I didn't say it was that one; it was one similar to that. Exhibit 2 is one similar to that one I saw on the chest of the man distributing the literature. I was very close to him, around the corner. I could see the petition, Plaintiff's Exhibit 3. He was holding it like this. I saw what was on it. I stooped down and looked at it. People's Exhibit 3 is the paper I picked up from the street. I am sure about that—positive.

Mr. Zemel read to the jury Exhibits 1 and 3, which appear in Rec. 81 and 83.

Ulysses Grant Dailey testified for the State as follows:

My name is Ulysses Grant Dailey. I reside at 364 East 48th Street, Chicago. I am a surgeon and physician, practicing general surgery, which is my specialty. I am licensed as a physician and surgeon in the State of Illinois since July, 1906. I belong to the Chicago Medical Society, Illinois State Medical Society, The American Medical Association, Fellow of the Institute of Medicine of Chicago, Diplomat of the American Board of Surgery, Fellow of the American College of Surgeons and the International College of Surgeons.

[fol. 16] The American College of Surgeons was founded in 1913 in Chicago and consists of leading surgeons in the United States and represents the guild of surgeons. It is the repository not only of surgical science, but of surgical ethics. White people as well as Negroes are members.

The International College of Surgeons, founded in Geneva, is comprised of surgeons, is international in scope and has the same ideals and ethics as those of the American College of Surgeons.

I graduated from the Northwestern University Medical School in Evanston and Chicago. In 1906 I taught anatomy at Northwestern University Medical School and clinical surgery at the Chicago Medical College, and post-graduate surgery at the Meharry Medical College in Nashville, Tennessee. I confine my practice to surgery. I have been a visiting lecturer in Port-O-Prince, Haiti; Kingston, Jamaica, on one occasion. I have not lectured in Europe.

I have studied in Berlin in 1912 and in Paris, Vienna, 1926 and 27.

I have visited clinics of all the European countries as well as the United States. I have been to Liverpool, to Manchester, to London, to Paris, to Rome, and to Naples, besides studying in Berlin and Vienna.

I was never convicted of any crime nor ever accused of any crime nor accused of any invasion of any kind.

(Mr. St. George objected to all the testimony as to the qualifications of the witness and whether or not he was ever convicted of or accused of any crime. The court overruled all objections).

I am a member of the Negro race, an American Negro. I am 65 years, I guess.

I was never convicted of any crime or charged with any crime, nor with any invasion or harassment or any encroachment of anybody's rights.

[fol. 17] I have never been accused of any mongrelization, rapes, robberies, knives, guns and marijuana.

I have lived continuously in Chicago since 1902, shorter periods earlier. I would say with intervals since 1893. I was never accused of hurling into faces of white people, certain challenges, hurling my ultimatum into the faces of white people, forcing them to accept my challenge, never accused of anything similar to it, nor accused of depriving anybody of their rights to life, liberty and the pursuit of happiness.

Cross-examination.

By Mr. St. George:

I am not the defendant in this case. I read portions of "Black Metropolis" by St. Clair Drake.

Argument on motion to strike Dr. Dailey's testimony.

The Court: Motion is denied.

Mr. St. George offers to prove that the word "invasion" is improperly used, that in the "Black Metropolis", page 77, paragraph one states: "The black belt became the black metropolis in the twenty years between the close of the First World War and the fifty or sixty thousand negroes who came to the city during the Great Migration had no

intention of returning to the South. Despite bombs and riots they insisted upon a place to live within the city, and upon room for friends and relatives who followed them North and from the children who would be born in Midwest Metropolis. By 1925, the city had adjusted itself to the obvious fact that a rapidly growing negro community was there to stay. Negroes had secured a foothold.

'Although Negroes had to fight block-by-block for houses during the war years, they did not have any trouble getting jobs. Negroes were either fired outright or asked to work at very low wages. White workers became apprehensive over a large pool of unorganized negroes that could be used [fol. 18] to keep wages low. The same year negroes were used to break a stockyards strike and although they became permanently established in that industry they earned the bitter antagonism of Irish, Polish and Italian workers.

'The new white-collar middle class and thousands of frugal skilled and semi-skilled workers rushed to buy or build homes in the suburbs, seeking fresh air and avoiding high taxes. They left the heart of the city to the poor, the new immigrants, the underworld, the corrupt political machine, and the negroes. Thousands of other middle-class people stayed within the city limits to stew in bitterness over the foreign-born workers and negroes who rented and bought the homes of their neighbors who had moved to the outskirts.''

Mr. St. George: That is with reference to the word "invasion".

The Court: That offer will be rejected. The objection is sustained.

Mr. St. George: Is the court going to permit me to show by this witness, if I can, that crime is rampant among the negro?

The Court: No; you offer to prove that question?

Mr. St. George: Yes.

The Court: The offer is rejected.

Mr. St. George: And that they have spread out from small groups on the south side to a large group on the south side and the west side, and in some places on the near north side.

The Court: Presuming that you are right about it, I still will reject the offer.

Mr. St. George: I want to show by this witness . . . that there were rapes, robberies, and knives, guns, marijuana by the negro—that is, marijuana used by the negro. [fol. 19] The Court: Same ruling—rejected.

Mr. St. George: I want to show by him further that the object of mixing, of having social dances and meeting the whites is to mongrelize the whites.

The Court: Same objection, I assume—same ruling.

Mr. St. George: I wish to show by him that he knows of very many cases of rapes, murders, and the use of marijuana by the negro—that is, marijuana used by the negro.

Mr. Zemel: Still objectionable.

The Court: Same ruling.

Mr. St. George: I can't ask him that question?

The Court: I don't think it is proper.

HARRY B. DEAS testified for the State as follows:

My name is Harry B. Deas. I reside at 6532 Drexel. I am a captain of police of the City of Chicago. I have been captain since August 28, 1943. I have been on the police force altogether thirty-five years. I was patrolman from 1915 to July 1, 1938, about twenty-three years. I was promoted to sergeant and was a sergeant from July 1, 1938 to February 15, 1943; then promoted to lieutenant in 1943; and acting captain from August 28, 1943. Then I was made a permanent captain on March 31, 1945. I have lived in Chicago since 1904, forty-six years.

I have never been convicted of any crime in Chicago or anywhere else.

Mr. St. George: May my objection stand to all of this evidence.

The Court: Let the record so show and the objection is overruled.

I was never charged with any invasion or harassment or encroachment of any person's rights, or with any aggression, rapes, robberies, knives, guns and marijuana. I was [fol. 20] never a defendant in any kind of case of the type mentioned. I never had any trouble with any white person. I was never accused of depriving any person of their rights to life, liberty and the pursuit of happiness.

At the present time I am assigned to 454 East 35th Street, from Stanton Avenue, where I command. I have 112 men. There are eight-hour shifts, twenty-four hour day. There are eight-hour shifts, but they are always subject to call twenty-four hours a day. I am a member of the negro race. In my command there are 112 men of which 22 are negroes and 76 are white patrolmen; also, 3 white lieutenants and 10 police sergeants, of which 7 are white and 3 are negroes. None of the negro sergeants and negro police officers in my command have criminal records. They would not be in the department if they had a record. They are carefully screened, fingerprinted and taken down to the FBI. If there is a record against them they are dropped. In the Chicago police force there are 173 negro patrolmen. In addition there are an additional amount who are sergeants and captains. There are 9 sergeants, 1 lieutenant and 1 captain, myself, 4 police women and 4 matrons that are colored. None of these people have any police records of any kind. I am pretty sure they have not. They would not be in the department. I think the Chicago Park District has quite a number—around 30 I imagine, negro officers. None of them are sergeants or lieutenants.

Cross-examination.

By Mr. St. George:

Officer William B. Murphy was in my command. I do not know who killed him. I know he was killed.

Q. Was it by whites or by blacks?

Mr. Zemel: I object to that Your Honor.

[fol. 21] The Court: Sustained.

Mr. Zemel objects and the court sustains the objections to any question by Mr. St. George as to whether or not the witness ever heard of crimes committed by negroes.

The Court: Do you want to make an offer?

Mr. St. George: Yes, same offer that I made before.

The Court: All right, let the record show that the offer is rejected and the objection is sustained and the jury will disregard those questions that were asked.

Mr. St. George: Do you know whether or not the negro population in Chicago has increased in the past ten years?

Mr. Zemel: I object.

Redirect examination.

By Mr. Zemel:

I never saw People's Exhibit 3 before.

ROBERT CROSPEY testified for the State as follows:

My name is Robert Crospey. I live in Woodale, Illinois. I am a professor of English at Roosevelt College, Chicago. I have a B. A. degree from Columbia University, an M. A. from Columbia University and a P. H. D. from Ohio State University. I have been a teacher of English for nine years now and a professor for three of those years. I taught for three years at Ohio State University and I taught at Monticello College in Albine.

To tell the meaning of the words "forced mongrelization" you would have to explain the context in which these words are used.

Mr. St. George: Those words are of common usage in the English language * * * They don't have to have a professor explain it.

[fol. 22] The Court: I agree with you.

Mr. Zemel: I will retract that, Judge. I do not wish to go any further, if your Honor feels that way, the State rests.

The Court: The State rests. Proceed with the defense.

Thereupon, the defendant, moved the Court, at the conclusion of the testimony on behalf of the People of the State of Illinois, to instruct the jury to find the defendant not guilty, and filed a motion, in writing, to find the defendant not guilty.

The Court: Motion by the defendant at the conclusion of the People's case to instruct the jury to find the defendant not guilty.

(Argument by counsel on said motion.)

The court denied said motion; to which action of the Court, defendant then and there duly excepted.

JOSEPH BEAUHARNAIS testified in his own behalf as follows:

My name is Joseph Beauharnais. I live at 10425 South Christiana, where I have lived four months. I do not wish to divulge where I lived prior to that. I am engaged in directing an organization known as the White Circle League of America, Inc., of which I am president. The corporation was organized November 9, 1949, under the laws of Illinois. The purpose of this organization is to maintain and safeguard the dignity, social edicts, customs, heritage, rights and way of life of the white race in America.

Q. Is this organization anti-Negro?

Mr. Zemel: I object to that; I move that it be stricken and the jury instructed to disregard it.

The Court: Objection sustained. It may be stricken and the jury will disregard it.

I published the fact that the organization is not anti-[fol. 23] Negro and that stand appears in the lithograph introduced in evidence. Exhibits 1, 2 and 3 were prepared under my direction.

Q. What is the purpose of these exhibits?

Mr. Zemel: I object to the purpose.

The Court: Sustained.

On January 6, 1950, I had a meeting at the Chicago Boys Club at 64th and University in a room about half as large as this room, 25 x 35. I sent out a notice for this meeting to a part of our total membership. There were about thirty-five present. The witness Latimore referred to himself as Hank Latemore. I called Hank Latemore and he answered to that name Latemore. He is not a member. I asked him if he were a member and he said no, he was not a member. I said "How did you get into this meeting, because it is by invitation only? And he said, "I heard about it", and he would like to help in the cause, he would like to help gather signatures to this petition, so I accepted his gesture of helpfulness on face value, that he was sincere.

After I had given the general instructions to that group of volunteers, who were to take positions at certain intersections in Chicago, and then I came to Mr. Latimore's name, asked him what intersection he would like to stand at

and he said he would prefer to work at Monroe and Dearborn because he was acquainted there. So he was assigned to Monroe and Dearborn.

I gave him a package of material. I told him that any of these leaflets that were not handed out, to be sure that they were mailed back or delivered in person within twenty-four hours to our headquarters, which he failed to do.

I first saw Mr. McFarland yesterday afternoon when he took the witness stand. I was not acquainted with him. [fol. 24] I did not hand any of this literature out myself on any public street in Chicago. I do not know what my workers did about handing out that literature. The petition part of Exhibit 3 was prepared by an attorney, and the other part of it was prepared by me.

Q. In the first part of Exhibit 1 you use the word "Invasion of the Negroes upon property in white neighborhoods". Can you explain what you meant by "invasion"?

Mr. Zemel: I object.

The Court: Sustained.

Mr. St. George: Had you any reason to use the word "invasion" in Plaintiff's Exhibit 1?

Mr. Zemel: I object.

The Court: Objection sustained. Strike the answer.

Mr. St. George: You say that: "Certain incidents in the last year took place fraught with great consequence and great danger to the peace and security of the people"? What did you have in mind when you wrote that?

Mr. Zemel: I object.

The Court: Sustained.

Mr. St. George: Did you have any proof——

Mr. Zemel: I object to this whole line of examination.

The Court: Objection sustained.

St. George: In the third paragraph you have: "Whereas there is great danger to the government from Communism, which is rife among the Negroes". What proof, if any, did you have for that statement?

Mr. Zemel: I object to that.

The Court: Sustained.

Mr. St. George: May I submit——

The Court: I am afraid I will have to stop you.

[fol. 25] Mr. St. George: The Court sustains all objections to this line of questioning?

The Court: Yes.

I am 53 years old, a widower. I have one son, 27 years old. I was in the First World War. I served in the Army as a number one aircraft machine gunner in France in the First War. For forty years I have made a very close and practical study of the status of the Negro here in Chicago.

Q. Did you have any reason to form this organization of the White Circle League?

Mr. Zemel: I object.

The Court: Sustained.

In 1940 there were 277,000 Negroes in Chicago.

Q. And do you know how many there are at the present time?

Mr. Zemel: I object.

The Court: Sustained.

This is about the second time I have been in a court room. I was never convicted of any crime or misdemeanor. I was in the Federal Court in 1945 in a civil matter. I did not on January 7th distribute that paper in a public place.

Mr. St. George: Was everyone who appeared admitted (to the meeting)?

Mr. Zemel: I object.

The Court: Objection sustained.

There was some one at the door who checked in those who came in. He was a young man assigned to have each one fill out a 3 x 5 inch index card with their name, address and telephone number. There were policemen there; they were standing at the entrance to the room, just as if they would stand at the door and out there by the corridor. There were three uniformed officers. This meeting was held on the fourth floor. These three policemen were on the [fol. 26] landing just outside of the door, and they stood there observing people that came in. There were no policemen on the lower floors.

Q. Was the meeting called for the public generally?

Mr. Zemel: I object.

The Witness: No sir.

The Court: Sustained. The jury will disregard the answer.

Mr. St. George: Did you examine district 5?

Mr. Zemel: I object.

The Court: Sustained similar objections to questions concerning other districts.

Mr. St. George: Now, personally, have you any animosity against the Negro?

Mr. Zemel: I object.

The Court: Sustained.

Mr. St. George: Have you in writing expressed your public opinion as to the Negro?

Yes.

Mr. Zemel: I object to that.

The Court: Yes. Sustained.

Cross-examination.

By Mr. Zemel:

I never saw Clifford McFarland in my life until yesterday. I did not see him Monday. Yes, I recall that I was in Room 1123, City Hall, on March 7, 1950, at a hearing on a motion. I did not know the man who signed the complaint. I was never in court before except on some civil matter in the Federal District Court. My understanding is that there is a proceeding pending in the state courts against the White Circle League of America instituted by the State of Illinois to revoke their charter. I have no idea when that [fol. 27] case was filed. I have been notified. It is pending. I do not know when it was filed. It was filed this year. I don't recall what month. I have never been in Court on that case. When it will be called I have no idea. I have retained lawyers to represent the White Circle League.

On January 6, 1950, I distributed this literature to about twelve people and the four items that comprise the exhibits. I assigned them to various street corners in Chicago. I did not tell them to pass this literature out to people who pass on that corner. I told them to wear this sign across the chest. I did not tell these people to have people sign this petition which is in evidence as People's Exhibit 1. I did not tell Ivon Latimore to have people sign this petition who passed this corner.

The office of the White Circle League is located at 10 N. Clark Street. I moved to 10 N. Clark Street on February 16, 1950, and until February 16, 1950, I was located at 82 W. Washington Street. I did not send an invitation to Hank Latimore informing him of the meeting on January 6; yet he was admitted. There was nothing secret about the meeting.

Redirect examination.

By Mr. St. George:

Q. In this literature, Plaintiff's Exhibit 3, that you composed, did you have any intent to expose the Negro citizens of Illinois and hold them in contempt and derision?

Mr. Zemel: I object.

The Court: Objection sustained.

Mr. St. George: In view of the ruling of the Court on certain matters, I wish to make an offer of proof on the matters that the judge has not allowed me to go into; namely, that if Mr. Cosnow of the Chicago Crime Commission were called, he would testify that District 5 has 148,000 [fol. 28] residents, of which 98% is Negro. I offer to prove that District 4 is 96% Negro; District 3 is 90%; District 27 is 60%; and reported offenses in these districts were as follows: 5th District, 384; 4th District, 292; 3rd District, 135; 27th District, 235. As against that we have white districts; that is District 36, 98% white, offenses reported 116; District 32, 99% white, 133 offenses reported.

I wish further to prove by Frank Lindstrom that his brother was shot on the street by a Negro; that his mother was pushed down by a person who ran up behind her in broad daylight half a block in front of a church just to take her purse on April 18, 1948.

I wish further to show by him and other witnesses that when a Negro family moves into a district or a block, real estate values immediately go down; that the home of Frank Lindstrom depreciated in value by such a figure, namely, $2,000.00.

The Court: Is that the proof offered?

Mr. St. George: That is the proof offered.

Mr. Zemel; It is all objectionable as immaterial, your Honor.

The Court: The offer is objected to and the objection of the State is sustained.

Mr. St. George: Now I want to make a motion at the end of all the testimony for a directed verdict.

The Court: The defense rests. Does the State rest? Do you have anything in rebuttal?

Mr. Zemel: The State rests.

The Court: Both sides rest.

(Which was all the evidence offered and received on the trial of said cause).

MOTION FOR DIRECTED VERDICT AND DENIAL THEREOF

Mr. St. George: Now I make a motion for a directed verdict at the end of all the testimony. And I wish to be heard on it.

[fol. 29] (Whereupon argument on motion for directed verdict followed).

Motion to instruct the jury to find the defendant not guilty.

The Court denied said motion to instruct the jury to find the defendant not guilty, to which defendant then and there duly excepted.

The Court: Motion is denied.

The Court: The Court has heard the argument on instructions tendered by the State and the Court rules that for the State instructions Numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13 and 14 will be given.

Mr. St. George: I object to State's Instruction Numbers 1, 2 and 3.

The Court: Objections are overruled. The Court has marked Instructions offered by defendant refused being Numbers 1, 3, 7, 8, 9, 11, 12, 15, 16, 17 and has given Instructions Numbers 2, 4, 5, 6, 10, 13, 14 and 16.

Thereupon, Mr. Zemel and Mr. St. George argued to the jury.

Thereupon, the Court gave to the jury the following instructions:

PLAINTIFF'S REQUESTED INSTRUCTIONS GIVEN TO JURY

At the request of counsel for the People the Court marked "Given" and gave to the jury each of the following instructions, in writing, numbered 5, 1, 2, 4, 4, 6, 7, 8, 10, 11, 12 and 9.

(5) The jury is the sole judge of the facts in the case, the credibility of the witnesses, and the weight to be given to their testimony. And, in anything that the court may have said throughout the trial or anything that the court may say in the instructions, the court has not intended and he does not now intend to express any opinion upon the facts of the case, upon the credibility of the Witnesses, or the weight to be given to their testimony. On the other hand, [fol. 30] the court is the sole judge of the law in the case, and it becomes the duty of the jury to follow the law as it is given to it by the court in his instructions. You have no right to disregard it, or disregard any portion thereof, but you are bound to take the whole of it as it is given to you by the court and apply it to the case.

(1) The Court instructs the jury that if you find from the evidence that the defendant, Joseph Beauharnais, did on or about January 7, 1950 manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place the lithograph, which was allowed in evidence in this case as Peoples Exhibit Number 3, then you are to find the defendant guilty and fine him not less than $50.00 nor more than $200.00.

(2) Circumstantial evidence in criminal cases is the proof of such facts and circumstances connected with or surrounding the commission of the crime charged as tend to show the guilt or innocence of the party charged, and if the facts and circumstances shown by the evidence in this case are sufficient to satisfy the jury of the guilt of the defendant beyond a reasonable doubt, then such evidence is sufficient to authorize the jury in finding the defendant guilty. The law demands a conviction wherever there is sufficient legal evidence to show the defendant's guilt beyond a reasonable doubt, and circumstantial evidence is legal evidence.

(3) The jury are instructed that it is not proper for

counsel in a case to state anything in argument bearing upon a question of fact and claimed to be within his personal knowledge or which may have been stated to him by others not witnesses in this case. You are, therefore, instructed to disregard such statements, if any have been made, and to make up your verdict upon the evidence [fol. 31] actually given in the case, without placing any reliance upon or giving any consideration to any statements of counsel not supported by the evidence.

In determining any of the questions of fact presented in this case, you should be governed solely by the evidence introduced before you.

(4) If the jury, after considering all the evidence in this case, find from the evidence that any witness has, or witnesses have, knowingly, wilfully and corruptly testified falsely to any fact material to the issue in this case, they have the right to entirely disregard the testimony of such witness or witnesses, except in so far as his or their testimony is corroborated by other credible evidence or by circumstances in evidence.

(6) The Court further instructs you that under your oaths you should not allow sympathy or prejudice to influence you in the least in finding your verdict in this case. In your deliberations you should not be influenced by anything other than the law and the evidence in the case.

(7) The Court instructs the jury that the jury are the sole judges of the credibility of the witnesses. In judging the credibility of the witnesses in this case, you should carefully scrutinize the testimony given, and in doing so, you may consider all the circumstances under which any witness has testified, his demeanor and manner while on the stand, his interest, if any, in the outcome of the case, the relations which he bears to the State or to the defendant, the manner in which he might be affected by the verdict, the extent to which he is contradicted or corroborated by any other credible evidence.

(8) The court instructs the jury, that a doubt to justify an acquittal must be reasonable, and it must arise from a [fol. 32] candid and impartial consideration of all the evidence in the case; and is such that, were the same kind of a doubt interposed in the graver transactions of life, it

would cause a reasonable and prudent man to hesitate and pause.

If, after considering all the evidence, you can say you have an abiding conviction of the truth of the charge, you are satisfied beyond a reasonable doubt.

(10) The court instructs the jury, as a matter of law, that the rule which clothes every person accused of crime with the presumption of innocence, and imposes upon the State the burden of establishing his guilt beyond a reasonable doubt, is not intended to aid any one who is in fact guilty of crime to escape, but is a humane provision of law intended, as far as human agencies can, to prevent an innocent person from being convicted.

(11) The jury are instructed, as a matter of law, that circumstantial evidence is competent, legal evidence and if the minds of the jury are convinced of the truth of the charge in the information in this case beyond a reasonable doubt, from facts and circumstances in proof, this is sufficient to authorize a conviction.

(12) The court instructs the jury, that as a matter of law, that in a criminal case the jury have a right to weigh and examine the evidence closely and carefully in the light of the common knowledge and experience of mankind and you have a right to take into consideration the common knowledge and experience of mankind and the course of the laws of nature in determining whether the evidence is reasonable or unreasonable or probable or improbable and in determining what weight it is entitled to receive.

And the court instructs you further, when the evidence is heard, jurors have a right to test its weight by their [fol. 33] knowledge and experience and their judgment derived from experience, observation and reflection. You are not bound to regard evidence precisely as given, but may consider its truth and weight by your knowledge of men, the affairs of life and the motives which influence persons. These are all proper and legitimate means of arriving at the truth in determining the issues in this case.

(9) The Court further instructs the Jury that these instructions are given and should be considered as one entire series, and each instruction should be considered in connection with all instructions bearing upon the same subject.

If, in putting in the evidence, or in argument, counsel for either party has made any statement not based upon the evidence, or if counsel made any statement which he afterwards withdrew, or which the Court afterwards struck out, the Jury should wholly disregard such statements.

To the giving of which instructions the defendant then and there duly excepted.

DEFENDANT'S REQUESTED INSTRUCTIONS GIVEN TO JURY

Thereupon, at the request of defendant, the Court marked "Given" and gave to the jury the following instructions, numbered 13, 2, 4, 5, 10, 14 and 6.

(13) Preliminary to your being accepted and sworn to act as jurors in this case, you were examined by counsel for the state and counsel for the defendant as to your competency and qualifications to act as jurors in this case. As a part of this examination each of you answered all questions asked you by both sides and your answers showed that you were competent and qualified to act as jurors and you were accepted as such jurors on the faith of the truth of your answers. The answers you then made to such ques-[fol. 34] tions in regard to your competency, qualifications, fairness, lack of prejudice and freedom from passion and sympathy, are as binding on you now as they were then and so remain binding upon you until you are finally discharged from further consideration of the case. It would be improper and unlawful for any of you to disregard those answers that rendered you competent jurors.

(2) The Court instructs the jury that the law is enforced and upheld just as much in a verdict of not guilty as in a verdict of guilty when the evidence fails to satisfy the jury beyond a reasonable doubt of guilt.

(4) The Court instructs the jury that while it is true that the legal presumption of innocence is designed to protect the innocent and not to assist or aid the guilty in escaping conviction, yet the Court further instructs you that the legal presumption of innocence is universal and ought to prevail in all cases as a complete and ample protection to every person accused of crime in such a way as to require the jury to find the accused not guilty, unless it is proved beyond all reasonable doubt by the facts and cir-

cumstances proved on the trial that the accused is guilty in manner and form as charged in the complaint.

(5) The jury are the sole judges of the credibility of the witnesses. Your verdict will not necessarily be determined by the number of witnesses testifying for either side. You may take into consideration the number of witnesses testifying in support of or against any fact or state of facts, the opportunities of the several witnesses for knowing the things about which they testify, their conduct and demeanor while testifying; their age, discretion and experience; their bias or lack of bias, their interest, if any, in the result of the trial, the probability or improbability of the truth of [fol. 35] their several statements; the relation which they bear to either side and the extent to which any witness is contradicted or corroborated by any other credible evidence, if at all, and any evidence that tends to shed light on his or her credibility.

(10) The Court instructs the jury that a reasonable doubt, within the meaning of the law, is such a doubt as would cause a reasonable, prudent, and considerate man, in the graver and more important affairs of life, to pause and hesitate before acting upon the truth of the matter charged or alleged.

(14) The defendant is a competent witness in his own behalf and you have no right to disregard his testimony from caprice, nor merely because he is the defendant. You are to treat him the same as any other witness, and subject him to the same tests, and only the same tests as are legally applied to other witnesses and while you have the right to take into consideration the interest he has in the result of this trial, you have also the right, and it is your duty, to take into consideration the fact, if such is the fact, that he has been corroborated by other credible evidence.

Thereupon, defendant requested the Court to give to the jury the following instruction, in writing, numbered 6:

(6) In giving these instructions, it is the intention of the court simply to instruct the jury as to the law applicable to the case, but it is not the intention of the court in the least degree to give the jury any opinion as to whether or not the defendant is guilty of the offense charged in the complaint, or to express any opinion as to the weight or suffi-

ciency of the testimony, or as to the credibility of any witness.

If you have heard any evidence in this case which the [fol. 36] court afterwards struck out, you are to wholly disregard.

DEFENDANT'S REQUESTED INSTRUCTIONS REFUSED

Thereupon, defendant requested the Court to give to the jury the following instructions numbered 15, 16 and 17, but the Court refused to give said instructions, to which ruling of the Court the defendant duly excepted.

(15) The jury is further instructed that even though the article complained of induced a condition of unrest and dissatisfaction with conditions as they are, or even stirred the reader to anger, still they must find the defendant not guilty unless they further find beyond reasonable doubt that the article complained of was likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest.

(16) The court instructs the jury that free speech and free press is guaranteed by the Constitution of the United States and also by the Constitution of the State of Illinois. A free press may best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. A free press is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech and of the press, though not absolute, are, nevertheless, protected against censorship or punishment unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance and unrest. There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas, either by legislature, courts or dominant political or com- [fol. 37] munity groups. No conviction can be had of the defendant in this case, even though the jury believe that the article complained of stirred people to anger, invited public dispute or brought about a condition of unrest.

(17) In order to find the defendant guilty in this case the jury must be convinced beyond all reasonable doubt of each and every one of the following items:

1) That on or about January 7, 1950, the defendant published, presented and exhibited the petition introduced in evidence and marked People's Exhibit 3.

2) That said defendant published, presented and exhibited said petition in a public place.

3) That said petition portrays depravity, criminality, unchastity or lack of virtue of citizens of the negro race and color.

4) That said petition exposes citizens of Illinois of the negro race and color to contempt, derision or obloquy.

If you do not find beyond a reasonable doubt any one of the foregoing items, you should find the defendant not guilty.

The foregoing were all the instructions requested, given and refused on the trial of this cause.

Thereupon, the jury rendered a verdict against the defendant as follows:

VERDICT

"We, the jury, find the defendant guilty as charged in the information number 50MC 28057 filed in the Municipal Court of Chicago and fine him the sum of $200.00." Signed by the foreman and eleven jurors.

Thereupon, the defendant moved the Court to vacate and set aside the verdict of the jury rendered and to grant a new trial, and for grounds of said motion, filed the following reasons, in writing:

[fol. 38] MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR FOR A NEW TRIAL

Motion—Defendant moves the Court for judgment notwithstanding the verdict, or, in the alternative, for a new trial, and for grounds therefor shows:

1. That Paragraph 471, Section 244a of Chapter 38 of the Illinois Revised Statutes is unconstitutional in that it violates the first amendment to the Constitution of the

United States and also Article 2, Paragraph 4 of the Constitution of the State of Illinois.

2. That Paragraph 471, Section 224a of Chapter 38 of the Illinois Revised Statutes is unconstitutional in that it violates the due process clause of the fourteenth amendment of the Constitution of the United States and also Section 2 of Article 2 of the Constitution of the State of Illinois.

3. That the right of defendant to manufacture, publish and present the lithograph in question (People's Exhibit 3) was protected by the first amendment to the Constitution of the United States and also by Article 2, Paragraph 4 of the Constitution of the State of Illinois, and by Section 17 of Article 2 of the Constitution of the State of Illinois.

4. Under the evidence at the end of the evidence for the People, it was the duty of the Court to direct a verdict for defendant without submitting the case to the jury.

5. Under the evidence at the end of all the evidence in this case it was the duty of the Court to direct a verdict for defendant without submitting the case to the jury.

6. That the lithograph in question (People's Exhibit 3) was not a violation of the statute in question.

7. That to attempt a charge of violation of said section of the statute by the publishing or exhibiting of the lithograph in question (People's Exhibit 3) is in violation of the due [fol. 39] process clause of the fourteenth amendment of the Constitution of the United States and the constitution of the State of Illinois.

8. The court improperly instructed the jury if they find from the evidence that the defendant, Joseph Beauharnais, did on or about January 7, 1950, manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place the lithograph, which was allowed in evidence in this case as People's Exhibit 3, then they are to find the defendant guilty and fine him not less than $50.00 nor more than $200.00.

9. The court improperly gave to the jury the instructions objected to by the defendant.

10. The court erred in refusing to give certain instructions requested by defendant.

11. The court erred in refusing to give the following instruction to the jury as requested by defendant:

In order to find the defendant guilty in this case the jury must be convinced beyond all reasonable doubt of each and every one of the following items:

1) That on or about January 7, 1950, the defendant published, presented and exhibited the petition introduced in evidence and marked People's Exhibit 3.

2) That said defendant published, presented and exhibited said petition in a public place.

3) That said petition portrays depravity, criminality, unchastity or lack of virtue of citizens of the negro race and color.

4) That said petition exposes citizens of Illinois of the negro race and color to contempt, derision or obloquy.

[fol. 40] If you do not find beyond a reasonable doubt any one of the foregoing items, you should find the defendant not guilty.

12. The court erred in refusing to give the following instruction to the jury as requested by defendant:

The court instructs the jury that free speech and free press is guaranteed by the Constitution of the United States and also by the Constitution of the State of Illinois. A free press may best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. A free press is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech and of the press, though not absolute, are, nevertheless, protected against censorship or punishment unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance and unrest.

There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas, either by legislature, courts

or dominant political or community groups. No conviction can be had of the defendant in this case, even though the jury believe that the article complained of stirred people to anger, invited public dispute or brought about a condition of unrest.

13. The court erred in refusing to give the following instruction to the jury, as requested by defendant:

> The jury is further instructed that even though the article complained of induced a condition of unrest [fol. 41] and dissatisfaction with conditions as they are, or even stirred the reader to anger, still they must find the defendant not guilty unless they further find beyond reasonable doubt that the article complained of was likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest.

14. The court erred in permitting incompetent, irrelevant, immaterial and prejudicial testimony on behalf of plaintiff, particularly the testimony of Dr. Richard Dailey and Captain Harry Deas; and refusing motion of defendant to strike said testimony from the record.

15. The argument of the prosecutor was prejudicial.

16. The verdict of the jury is contrary to the law; it is contrary to the evidence; it is contrary to the law and the evidence.

On May 12, 1950, the defendant moved the Court for Judgment Notwithstanding the Verdict, and for grounds of said motion filed reasons appearing on pages 234, 235 and 236 of the record (Abst. 38-41).

Motion for New Trial Overruled

Thereupon, the Court overruled the foregoing motion for a new trial, which the defendant then and there duly excepted.

Thereupon, the Court entered judgment on the verdict.

Motion in Arrest of Judgment Overruled

Thereupon, the defendant moved the Court in arrest of judgment, which motion the Court overruled and defendant, then and there duly excepted.

[fol. 42] APPEAL ALLOWED

Thereupon, the defendant prayed an appeal to the Supreme Court of the State of Illinois, which was allowed by the Court, upon the defendant filing his appeal bond in the sum of $400.00 and filing his Bill of Exceptions within ninety days.

Certificate by the court reporter.

Certificate of July 13, 1950, by the trial judge.

Stipulation by counsel to incorporate the original report of Trial Proceedings, in lieu of a copy thereof, in the transcript of record to be made and filed in the Supreme Court of the State of Illinois on appeal of this cause.

Order of July 25, 1950, that the written motion for a new trial be restored nunc pro tunc as of May 12, 1950.

Motion of defendant for Judgment Notwithstanding the Verdict or, in the alternative, for a new trial, filed nunc pro tunc as of May 12, 1950, heretofore appearing in the record, pages 234, 236.

Certificate dated July 26, 1950, of the Clerk of the Municipal Court of Chicago that the foregoing is a true, perfect and complete transcript of the record.

Respectfully submitted, Maximilian J. St. George,
Attorney for Defendant-Appellant.

[fol. 43] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the thirteenth day of November in the year of our Lord, one thousand nine hundred and fifty, within and for the State of Illinois.

Present: Jesse L. Simpson, Chief Justice; Justice Francis S. Wilson, Justice William J. Fulton, Justice Joseph E. Daily, Justice Walter T. Gunn, Justice Charles H. Thompson, Justice Albert M. Crampton; Ivan A. Elliott, Attorney General; Harry G. Newman, Marshal.

Attest: Earle Benjamin Searcy, Clerk.

Be it remembered, that, to-wit: on the 29th day of November, A. D. 1950, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

No. 31719

PEOPLE STATE OF ILLINOIS, Appellee

vs.

JOSEPH BEAUHARNAIS, Appellant

Appeal from Municipal Court, City of Chicago, 50 MC 28057

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that appellant hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

[fol. 44] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of January in the year of our Lord, one thousand nine hundred and fifty-one, within and for the State of Illinois.

Present: Jesse L. Simpson, Chief Justice; Justice Francis S. Wilson, Justice William J. Fulton, Justice Joseph E. Daily, Justice Walter T. Gunn, Justice Charles H. Thompson, Justice Albert M. Crampton; Ivan A. Elliott, Attorney General; Harry G. Newman, Marshal.

Attest: Earle Benjamin Searcy, Clerk.

Be it remembered, that afterwards, to-wit: on the 18th day of January, A. D. 1951, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

No. 31719

PEOPLE STATE OF ILLINOIS, Appellee

vs.

JOSEPH BEAUHARNAIS, Appellant

Appeal from Municipal Court, City of Chicago, 50 MC 28057

[fol. 45] OPINION MODIFIED ON THIS PAGE UPON DENIAL OF PETITION FOR REHEARING ON MARCH 20, 1951

Docket No. 31719—Agenda 44—November, 1950

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee

v.

JOSEPH BEAUHARNAIS, Appellant

Mr. Justice FULTON delivered the opinion of the Court:

This is a criminal prosecution, in the municipal court of Chicago, against the appellant, herein termed defendant, Joseph Beauharnais, for a violation of section 224a of

division I of the Criminal Code, (Ill. Rev. Stat. 1949, chap. 38, par. 471,) which reads as follows:

"It shall be unlawful for any person, firm or corporation to manufacture, sell or offer for sale, advertise or publish, present or exhibit in any public place in this state any lithograph, moving picture, play, drama or sketch, which publication or exhibition portrays depravity, criminality unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots. Any person, firm or corporation violating any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50.00), nor more than two hundred dollars ($200.00.)"

The amended information filed on March 6, 1950 charged "that defendant on January 7, 1950, at the City of Chicago, did unlawfully publish, present and exhibit in public places, lithographs, which publications portrayed depravity, criminality, unchastity or lack of virtue of citizens of Negro race and color and which exposes citizens of Illinois of the Negro race and color to contempt, derision, or obloquy, which more fully appears in Exhibit A, which is attached hereto and made a part thereof."

Exhibit A referred to is a printed sheet of paper and in the form of a petition to Mayor Kennelly and to the city council of the city of Chicago. It is headed in large, black letters as follows:

"Preserve and Protect White Neighborhoods!
From the Constant and Continuous Invasion, Harrassment and Encroachment by the Negroes"

[fol. 46] In the body of the page it solicits the aid of one million white people in the city of Chicago to oppose the national campaign now on and supported by "Truman's Infamous Civil Rights Program" and many pro-Negro organizations to amalgamate the black and white races with the object of mongrelizing the white race. It points out that the "White Circle League of America" is the only white voice being raised in protest against Negro aggression; that white people must take advantage of this opportunity to

become united; that "if persuasion and the need to prevent the white race from becoming mongrelized by the Negroes will not unite us, then the aggressions . . . rapes, robberies, knives, guns and marijuana of the negro, surely will."

The entire exhibit is full of similar charges and inflammatory, anti-Negro language, appealing to the white people of the nation to force denial of equal rights to Negro citizens as guaranteed to them by the constitution of the United States.

The language used in the exhibit is the source of complaint by the prosecution. The circulation of copies of this exhibit on the streets of the city of Chicago, the solicitation of agents to conduct the distribution of same, and general direction of the movement by the defendant constitute part of the charge.

The case was tried before a jury, which found defendant guilty as charged in the information and fined him the sum of $200. Motions for new trial, for judgment notwithstanding the verdict, and in arrest of judgment were overruled, and judgment entered upon the verdict. Defendant brings an appeal direct to this court because the constitutionality of the section above quoted is challenged.

The defendant on the witness stand admitted that he was the founder, president, and director of the organization known as the "White Circle League of America;" that the literature in question was prepared by him or by someone else under his direction. He further admitted that he gave the said literature to agents with specific instructions as to how it should be distributed on the public streets of the city of Chicago, all of which was carried out and performed. The alleged lithograph follows with a plea for membership in the White Circle League.

Defendant's main defense is that section 224a, hereinbefore quoted, is unconstitutional because it violates the first amendment to the constitution of the United States and section 4 of article II of the constitution of the State of [fol. 47] Illinois, both of which guarantee to the people the right of free speech and freedom of the press. He further insists that said section 224a is unconstitutional because it deprives citizens of life, liberty or property without due process of law, as provided in the fourteenth amendment to the constitution of the United States, and that it offends section 17 of article II of the constitution of Illinois pro-

viding, "The people have the right to assemble in a peaceable manner to consult for the common good, to make known their opinions to their representatives, and to apply for redress of grievances."

It is claimed by the defendant that not only freedom of the press but also freedom of assembly and right to petition the government for a redress of grievances are threatened in this case.

In support of his contentions, defendant cites *Thornhill* v. *Alabama*, 310 U.S. 105. In that case a State statute forbidding loitering or picketing during a strike was involved, and the court upheld the right of peaceful picketing during labor disputes. Also cited was *Terminello* v. *City of Chicago*, 337 U.S. 1. There the defendant was convicted of disorderly conduct under a city ordinance. The ordinance, as construed by the trial court in his charge to the jury, permitted conviction of the defendant if his speech stirred people to anger, invited public dispute, or brought about a condition of unrest. The Supreme Court of the United States held that a conviction resting on any of those grounds may not stand, and reversed the case.

In *Near* v. *Minnesota*, 283 U.S. 697, an attempt was made to enjoin the publication of a Minneapolis newspaper because of the publication of scandalous matter. In none of the above cases was a statute similar to the present one involved, and neither are those cases conclusive of the questions arising in this case.

The Supreme Court of the United States and this court have held that the freedom of speech and of the press, which is secured by the constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom. *Gitlow* v. *People*, 268 U.S. 652; *Chaplinsky* v. *New Hampshire*, 315 U.S. 658; *People* v. *Doss*, 384 Ill. 400.

Section 224a, in question, is a form of criminal libel law [fol. 48] authorized by the constitution of the State of Illinois, and whether or not the defendant abused the freedom of speech granted by section 4 of article II of that constitution is the primary question in this case. In *Schenck* v. *U.S.* 249 U.S. 47, the principle was announced as follows: "The question in every case is whether the words used are

used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about substantive evils that Congress has a right to prevent."

A mere reading of the libelous publication in question here, refers to Negroes, as a class possessing various criminal tendencies, unchastity, and degrading sexual inclinations, all of which are "fighting words" liable to cause violence and disorder between the races. Any ordinary person could only conclude from the libelous character of the language that a clash and riots would eventually result between the members of the White Circle League of America and the Negro race.

The very statute which defendant challenges as unconstitutional was upheld in the case of *Bevins* v. *Prindable*, 39 Fed. Supp. 708, and affirmed by the United States Supreme Court in a memorandum opinion at 314 U.S. 573.

We do not find any merit in the claim that the statute is too broad in scope, or that the words of the statute are vague. We further believe that the controverted exhibit is sufficiently described as a lithograph and further as a publication within the terms of the statute.

It is also urged by defendant that the court erred in refusing defendant the right to prove the truth of the alleged libel, because section 179 of division I of the Criminal Code, (Ill. Rev. Stat. 1949, chap. 38, par. 404,) provides as follows: "In all prosecutions of libel, the truth, when published with good motives, and for justifiable ends, shall be a sufficient defense." Defendant made an offer of proof purporting to show that in white districts in Chicago the number of offenses reported were much smaller in number than those reported in districts largely populated by Negroes. He further offered to prove by witness Frank Lindstrom that his brother was shot by a Negro and that when a Negro family moves into a district or a block, real estate values immediately go down, and that the home of the said witness had depreciated in value about $2000. The People objected to the offer and the objection was sustained. The admission of such proof would be directed only as to a portion of the offense charged and could not in any manner be classed as [fol. 49] published for good motives and for justifiable ends. In fact, it is hard to see how, with the libelous publication in evidence, any proof of good motives or justifiable ends could be introduced. The trial court very properly denied the admission of the offered proof. (*People* v. *Spielman*, 318

Ill. 482; *People* v. *Fuller*, 238 Ill. 116.) Neither did the court err in denying defendant's motion for a directed verdict nor in the giving of the complained-of instruction to the jury.

The libelous and inflammatory language used in said exhibit A was designed to breed hatred against the Negro race and is not of such character as entitles defendant to the protection of freedom of speech guaranteed by the State and Federal constitutions.

The judgment of the municipal court of Chicago is affirmed.

Judgment affirmed.

[fol. 50] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of January in the year of our Lord, one thousand nine hundred and fifty-one, within and for the State of Illinois.

Present: Jesse L. Simpson, Chief Justice; Justice Francis S. Wilson, Justice William J. Fulton, Justice Joseph E. Daily, Justice Walter T. Gunn, Justice Charles H. Thompson, Justice Albert M. Crampton, Ivan A. Elliott, Attorney Geenral; Harry G. Newman, Marshal.

Attest: Earle Benjamin Searcy, Clerk.

Be it remembered, that, to-wit: on the 18th day of January, 1951, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

No. 31719

PEOPLE STATE OF ILLINOIS, Appellee,

vs.

JOSEPH BEAUHARNAIS, Appellant

Appeal from Municipal Court, City of Chicago, 50 MC 28057

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as mat-

ters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Municipal Court of the City of Chicago aforesaid, be affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error.

I, Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In witness whereof, I have hereunto subscribed my name and affixed the Seal of said court this — day of ——, 19—.

—— ——, Clerk, Supreme Court of the State of Illinois.

[fol. 51] And afterwards, to-wit: on the 9th day of February, A. D. 1951, there was filed in the Office of the Clerk of the Supreme Court a certain petition for rehearing, which is in the words and figures following, to-wit:

[fol. 52] [Stamp:] Filed Feb. 9, 1951. Earle Benjamin Searcy, Clerk

IN THE SUPREME COURT OF ILLINOIS, SEPTEMBER TERM, A. D. 1950

No. 31719

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

vs.

JOSEPH BEAUHARNAIS, Defendant-Appellant

Appeal from the Municipal Court of Chicago, Honorable Joseph H. McGarry, Judge Presiding

PETITION FOR REHEARING

Maximilian J. St. George, Attorney for Defendant-Appellant.

[fol. 53] To The Honorable Justices of The Supreme Court of Illinois:

Comes now Joseph Beauharnais, appellant (defendant), and having duly filed his notice of intention to petition for a rehearing in this cause in which the opinion was filed on January 18, 1951, respectfully shows to this Court that:

The opinion of this Court is wholly without judicial precedent.

The opinion seems to hold that the constitutionality of par. 471, of chap. 38, of Ill. Rev. Stat. 1949, has been upheld when in fact it never has; that the uttering of all publica-
[fol. 54] tions which are libelous is within the purview of the statute, when in fact the statute contains only certain specific types of libelous publications; and that a conviction may be based solely on so called "fighting words" while finding that there is no clear and present danger, when in fact the Supreme Court of the United States has continuously held that "fighting words" alone are not sufficient.

Petitioner (defendant), respectfully shows to the Court that in its opinion in this cause this Court overlooked or misapprehended the following:

1. This Court on Page 4 (middle) says that the case of Bevins v. Prindable, 39 Fed. Sup. 708, 314 U. S. 573 upheld the constitutionality of the statute here involved.

This Court misconstrues the findings in *Bevins* v. *Prindable*, 39 Fed. Sup. 708, 314 U. S. 573 when it says that the cited case "upheld" the statute in question. The only question there involved was whether the Federal Court had the right to enjoin the State's agents. On Page 709 the Court there said:

> "Plaintiffs seek by interlocutory injunction to restrain the enforcement of a state statute by the qualified and acting officers * * *".

In denying the injunction the Court went on to say on pages 711-712 that there was no showing that plaintiffs would suffer irreparable damage and even "if the statute were clearly unconstitutional, it would not necessarily follow that the interlocutory injunction here prayed for should issue from this Court".

As to upholding the constitutionality of the statute, the Court clearly states at point 6, page 712:

> "In the view we take of the case under the evidence we do not now find it necessary to consider the constitutionality of the statute * * * Whether a statute of [fol. 55] the State of Illinois is valid which makes the defamation of a class a criminal offense would seem first to be a question of the courts of Illinois."

After a discussion of the principle that a state court must have the first chance at deciding the constitutionality of the acts of its legislature, the Court goes on to state on page 713:

> "Should the decision of the Illinois courts be unsatisfactory, a review of the Federal question by the Supreme Court of the United States will be available (and the *Federal Courts will not interfere in the present case*)."

2. On Page 4 (middle) the Court mis-states the scope of the Statute.

That the literature in question is not a lithograph must be self-evident to the Court upon inspection; for the exhibit

(People's Ex. 3) is in its hands in the original form, on page 13 of the abstract and page 83 of the record. Therefore, this Court must have found that *all* publications could be grounds for prosecution, contrary to the precise wording of the statute.

On a careful re-reading of this statute this Court will find that the only "publication or exhibits" which come within the purview of the statute is a lithograph, moving picture, play, drama or sketch. "*Expressio unis est exclusio alterius!*" (See appellant's brief, pages 21-24.)

3. The Decision of this Court does not meet the "clear and present danger" doctrine laid down by the Supreme Court of the United States.

This Court states on page 4 that "riots would *eventually* result". Therefore, this Court admits that the lower court found no "clear and present danger". A conviction without a "clear and present danger", or such statute which [fol. 56] allows a conviction without a "clear and present danger", is unconstitutional as was stated in the cases cited in appellant's brief on pages 18-21.

Likewise, the construction which the trial court gave to the questioned statute, when it maintained that a conviction could be had under the objectionable instruction #1 (A. 30, R. 197; appellant's brief, page 27) is patently contrary to the State and Federal Constitutions in that it permits a conviction without the finding of a "clear and present danger", without a consideration of truth and good motives, and without regards to any quantum of proof. We humbly submit that since the said instruction was the only one which contained the gist of the offense that a statement of the quantum of proof necessary was vital to it, and that the lack of such quantum was fatal.

If this "clear and present danger" rule is not strictly adhered to, anyone who utters the Bible can be prosecuted; for the Bible is full of derogatory stories and statements about the Jews. Defendant said nothing worse about the negroes than Christ did about the Jews: "Then said Jesus unto the Jews, ye are of your father the devil, and the lusts of your father ye will do. He was a murderer from the beginning, and abode not in the truth, because there is no truth in him. When he speaketh a lie, he speaketh of his own; for he is a liar and the father of it." (St. John, 8:44.)

This Court is ahowing this conviction to stand on the mere finding that the language used constituted "fighting words", contrary to the law cited by appellant in his brief, pages 8-15.

[fol. 57] 4. On Page 2 (bottom) this Court misconstrues the evidence.

The State offered proof that defendant gave the questioned literature to agents, but the State was unable to prove, nor did it try to prove, that any agent under defendant's direction and control distributed this literature in a public place. But on the contrary, the State proved that at least one of these purported agents refused to distribute the literature (A. 9; R. 67). Therefore, defendant should have been granted a directed verdict at the close of the State's case.

Also, there is no showing that defendant tried as it says on page 2 to "force (the) denial of equal rights to negro citizens as guaranteed to them by the constitution of the United States". All that the evidence shows is that defendant tried to confine the habitation of both whites and blacks to separate areas, all of which was to be done by ordinances, statutes or amendments, and not by force.

If a man is denied his right to try to have changes made in the laws by legal means just because his endeavors breed hatred "freedom of speech and press and right of redress" are mere nullities.

Defendant wishes to call to the attention of this court the case of *Feiner* v. *New York*, case 93 Oct. Term 1950, 11 C.C.H. U.S. Supreme Court Bulletin page 399, handed down by the Supreme Court of the United States on January 15, 1951, which decision is only three days prior to the decision in the present case. In the cited case the court clearly shows how eminent and clear the danger of a breach of peace must be before the state may intervene: though [fol. 58] the speech, therein, exhorted the negroes to rise in arms against the whites, an impending riot had to be proven before defendant could be found guilty.

For the reasons hereinabove set forth, defendant earnestly prays that a re-hearing may be granted.

Respectfully submitted, Maximilian J. St. George,
Attorney for Defendant-Appellant.

[fol. 59] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the twelfth day of March in the year of our Lord, one thousand nine hundred and fifty-one, within and for the State of Illinois.

Present: Jesse L. Simpson, Chief Justice, Justice Francis S. Wilson, Justice William J. Fulton, Justice Joseph E. Daily, Justice Walter T. Gunn, Justice Charles H. Thompson, Justice Albert M. Crampton; Ivan A. Elliott, Attorney General; Harry G. Newman, Marshal.

Attest: Earle Benjamin Searcy, Clerk.

Be it remembered, that, to-wit: on the 19th day of March, A. D. 1951, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

No. 31719

PEOPLE STATE OF ILLINOIS, Appellee,

vs.

JOSEPH BEAUHARNAIS, Appellant

Appeal from Municipal Court, City of Chicago, 50 MC 28057

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

[fol. 60] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the twelfth day of March in the year of our Lord, one thousand nine hundred and fifty-one, within and for the State of Illinois.

Present: Jesse L. Simpson, Chief Justice; Justice Walter T. Gunn, Justice Charles H. Thompson, Justice Albert M. Crampton, Justice William J. Fulton, Justice Joseph E. Daily, Justice Walter V. Schaefer; Ivan A. Elliott, Attorney General; Harry G. Newman, Marshal.
Attest: Earle Benjamin Searcy, Clerk.

And afterwards, to-wit: on the 18th day of April, A. D. 1951, the same being one of the days in vacation after the term of Court aforesaid, there was filed in the Office of the Clerk of the Supreme Court a certain stay order, which is in the words and figures following, to-wit:

[fol. 61] IN THE SUPREME COURT OF ILLINOIS, SEPTEMBER TERM, A. D. 1951

No. 31719

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

vs.

JOSEPH BEAUHARNAIS, Defendant-Appellant

Appeal from the Municipal Court of Chicago

Honorable Joseph H. McGarry, Judge Presiding

ORDER

This matter coming on to be heard on the motion of Joseph Beauharnais to stay the mandate heretofore entered in this cause, the Court being fully advised in the premises, and after argument of counsel;

It is ordered that the mandate in this cause be and the same is hereby stayed until such time as the Supreme Court

of the United States shall decide the petition of defendant for certiorari.

Enter:

(S.) Walter V. Schaefer, Judge.

April 17, 1951.

[fol. 62] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

I, Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois, and keeper of the records and Seal thereof, do hereby certify the foregoing to be a true copy of the record of this Court in a certain cause entitled: No. 31719, People State of Illinois, Appellee, vs. Joseph Beauharnais, Appellant, Appeal from Municipal Court, City of Chicago, 50 MC 28057 filed in this office on the 10th day of August, A. D. 1950.

In witness whereof, I have hereunto subscribed my name and affixed the Seal of said court this 8th day of June, 1951.

Earle Benjamin Searcy, Clerk, Supreme Court of the State of Illinois. (Seal.)

[fol. 59] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 8, 1951

The petition herein for a writ of certiorari to the Supreme Court of the State of Illinois is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM (~~1950~~) 1951

JOSEPH BEAUHARNAIS,

Petitioner,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION AND BRIEF FOR A WRIT OF CERTIORARI TO THE JUSTICES OF THE SUPREME COURT OF THE STATE OF ILLINOIS

ALFRED A. ALBERT,
Attorney-at-Law,
c/o American Civil Liberties Union,
170 Fifth Avenue,
New York, N. Y.

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Supreme Court of the United States

OCTOBER TERM (1950)

JOSEPH BEAUHARNAIS,
Petitioner,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE JUSTICES OF THE SUPREME COURT OF THE STATE OF ILLINOIS

To the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Joseph Beauharnais, respectfully represents and petitions for a writ of certiorari to the Justices of the Supreme Court of the State of Illinois.

Summary Statement

The Petitioner, Joseph Beauharnais, seeks a review of a judgment of the Supreme Court of the State of Illinois, which judgment affirmed the judgment of the Municipal Court of Chicago. The judgment of the Municipal Court of Chicago was a judgment of guilty against the Petitioner for violation of Sec. 224 A of Div. 1 of the Criminal Code (Ill. Rev. Statutes 1949, Chapter 38, Paragraph 471) as follows:

> "It shall be unlawful for any person, firm or corporation to manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place in

this state any lithograph, moving picture, play, drama or sketch, which publication or exhibition portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots. Any person, firm or corporation violating any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50.00), nor more than two hundred dollars ($200.00)."

By amended information filed March 6, 1950, your Petitioner was charged as follows:

"On January 7, 1950, at the City of Chicago, did unlawfully publish, present and exhibit in public places, lithographs, which publications portrayed depravity, criminality, unchastity or lack of virtue of citizens of Negro race and color and which exposes citizens of Illinois of the Negro race and color to contempt, derision, or obloquy, which more fully appears in Exhibit A, which is attached hereto and made a part hereof."

Trial of your Petitioner under the above information was had in the Municipal Court of Chicago May 4, 1950 and on said date after a hearing by jury your Petitioner was found guilty and was fined in the sum of $200.

At such hearing the defendant raised by way of request for instructions to the jury requests Nos. 15 and 16 (R. pp. 36, 37) as follows:

"(15) The jury is further instructed that even though the article complained of induced a condition of unrest and dissatisfaction with conditions as they are, or even stirred the reader to anger, still they must find the defendant not guilty unless they further find beyond reasonable doubt that the article complained of was likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest."

"(16) The court instructs the jury that free speech and free press is guaranteed by the Constitution of the United States and also by the Constitution of the State of Illinois. A free press may best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. A free press is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech and of the press, though not absolute, are, nevertheless, protected against censorship or punishment unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance and unrest. There is no room under our constitution for a more restrictive view. For the alternative would lead to standardization of ideas, either by legislature, courts or dominant political or community groups. No conviction can be had of the defendant in this case, even though the jury believe that the article complained of stirred people to anger, invited public dispute or brought about a condition of unrest."

A serious question as to the constitutionality of the Statute under which the Petitioner was prosecuted was thus raised.

The specific requests for instructions were denied and the Petitioner duly objected and took exception to the Ruling of the Court and after verdict the Petitioner moved for judgment notwithstanding the verdict and/or a new trial and again set forth the issue of the constitutionality of the statute (R. 38 Nos. 1, 2, 3, 7, 12 & 13; pp. 38, 39, 40, 41) as follows:

"(1) That Paragraph 471, Section 244a of Chapter 38 of the Illinois Revised Statutes is unconstitutional in that it violates the first amendment to the Constitution of the United States and also Article 2, Paragraph 4 of the Constitution of the State of Illinois.

"(2) That Paragraph 471, Section 224a of Chapter 38 of the Illinois Revised Statutes is unconstitutional in that it violates the due process clause of the Four-

teenth Amendment of the Constitution of the United States and also Section 2 of Article 2 of the Constitution of the State of Illinois.

"(3) That the right of defendant to manufacture, publish and present the lithograph in question (People's Exhibit 3) was protected by the First Amendment to the Constitution of the United States and also by Article 2, Paragraph 4 of the Constitution of the State of Illinois, and by Section 17 of Article 2 of the Constitution of the State of Illinois.

"(7) That to attempt a charge of violation of said section of the statute by the publishing or exhibiting of the lithograph in question (People's Exhibit 3) is in violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States and the Constitution of the State of Illinois."

(12) The court erred in refusing to give the following instruction to the jury as requested by defendant. (This paragraph of the motion was the same as Request No. 16 appearing (supra) and is not set forth herein.)

(13) The court erred in refusing to give the following instruction to the jury as requested by defendant. (This paragraph of the motion was the same as Request No. 15 appearing (supra) and is not set forth herein.)

The Petitioner's motion for judgment notwithstanding the verdict and/or new trial was denied and petitioner duly objected and took exception (R. 41). Thereafter, an appeal was taken to the Supreme Court of the State of Illinois which on January 18, 1951 affirmed the judgment of the Municipal Court of the City of Chicago and, thereafter, on a motion for rehearing the court likewise denied said motion on March 19, 1951.

Statement of Facts

It appears from the evidence in the record that on January 7, 1950, the Petitioner was the organizer, founder and president of the White Circle League of America, an Il-

linois non-profit corporation organized November 9, 1949, for the purpose of maintaining and safeguarding the dignity, social edicts, customs, heritage, rights, and the way of life of the white race in America.

Some time on January 6, 1950, there was a meeting of this organization and that meeting was chaired by the Petitioner. The purpose of the meeting was to obtain volunteers who would on the following day distribute leaflets and obtain signatures to a petition. Each of the volunteers was to and did in fact on January 7, 1950, wear a placard sign with the following large letters thereon:

> "Preserve and protect white neighborhoods. Sign petitions here. Sponsored by the White Circle League of America."

These volunteers were on the public streets of the city of Chicago in various locations. The Petitioner was not one of them, but the Petitioner passed out to the volunteers the various petitions and other literature with instructions that all that remained over should be returned to him. The petition is State Exhibit No. 3 as follows:

> "PRESERVE AND PROTECT WHITE NEIGHBORHOODS!
> FROM THE CONSTANT AND CONTINUOUS INVASION,
> HARASSMENT AND ENCROACHMENT BY
> THE NEGROES
>
> (We want two million signatures of White men and women)
>
> PETITION
>
> To The Honorable Martin H. Kennelly
> and City Council of the City of Chicago
>
> WHEREAS, the white population of the City of Chicago, particularly on the South Side of said city, are seething, nervous and agitated because of the constant and continuous invasion, harassment and encroachment by the Negroes upon them, their property and neighborhoods and—

WHEREAS, there have been disastrous incidents within the past year, all of which are fraught with grave consequences and great danger to the Peace and Security of the people, and

WHEREAS, there is great danger to the Government from communism which is rife among the Negroes, and

WHEREAS, we are not against the Negro; we are for the white people and the white people are entitled to protection:—

We, the undersigned white citizens of the City of Chicago and the State of Illinois, hereby petition the Honorable Martin H. Kennelly, Mayor of the City of Chicago and the Aldermen of the City of Chicago, to halt the further encroachment, harassment and invasion of white people, their property, neighborhoods and persons, by the Negro—through the exercise of the Police Power; of the Office of the Mayor of the City of Chicago, and the City Council.

WANTED

ONE MILLION SELF-RESPECTING WHITE PEOPLE IN CHICAGO TO UNITE UNDER THE BANNER OF THE WHITE CIRCLE LEAGUE OF AMERICA to oppose the National Campaign now on and supported by TRUMAN'S INFAMOUS CIVIL RIGHTS PROGRAM and many Pro Negro Organizations to amalgamate the black and white races with the object of mongrelizing the white race!

THE WHITE CIRCLE LEAGUE OF AMERICA is the only articulate white voice in America being raised in protest against Negro aggressions and infiltrations into all white neighborhoods. The white people of Chicago MUST take advantage of this opportunity to become UNITED. If persuasion, and the need to prevent the white race from becoming mongrelized by the Negro will not unite us, then the aggressions * * * rapes, robberies, knives, guns and marijuana of the Negro, SURELY WILL.

The Negro has many national organizations working to push him into the midst of the white people on many fronts. The white race does not have a single organization to work on a NATIONAL SCALE to make its wishes

articulate and to assert its natural rights to self-preservation. THE WHITE CIRCLE LEAGUE OF AMERICA proposes to do the job. WE ARE NOT AGAINST THE NEGRO! WE ARE FOR THE WHITE PEOPLE!

We must awaken and protect our white families and neighborhoods before it is too late. Let us work unceasingly to conserve the white man's dignity and rights in America.

THE WHITE CIRCLE LEAGUE OF AMERICA, INC.—Joseph Beauharnais, Pres.—FR 2-8533, Suite 808, 82 W. Washington St. VOLUNTEERS NEEDED TO GET 25 SIGNATURES ON PETITION! COME TO HEADQUARTERS!

I wish to be enrolled as a member in THE WHITE CIRCLE LEAGUE OF AMERICA and I will do my best to secure ten (10) or more members.

THE FIRST LOYALTY OF EVERY WHITE PERSON IS TO HIS RACE. ALL THE COMBINED PRO-NEGRO FORCES HAVE HURLED THEIR ULTIMATUM INTO THE FACES OF THE WHITE PEOPLE. WE ACCEPT THEIR CHALLENGE.

THEY CANNOT WIN!

IT WILL BE EASIER TO REVERSE THE CURRENT OF THE ATLANTIC OCEAN THAN TO DEGRADE THE WHITE RACE AND ITS NATURAL LAWS BY FORCED MONGRELIZATION.

THE HOUR HIS STRUCK FOR ALL NORMAL WHITE PEOPLE TO STAND UP AND FIGHT FOR OUR RIGHTS TO LIFE, LIBERTY AND THE PURSUIT OF HAPPINESS.

JOSEPH BEAUHARNAIS

APPLICATION FOR 1950 MEMBERSHIP

THE WHITE CIRCLE LEAGUE OF AMERICA, INC.

(Not For Profit)

Mail to—

THE WHITE CIRCLE LEAGUE OF AMERICA, INC.
82 W. Washington St.
Chicago 2, Illinois
Tel, FR 2-8533

Date _____ 19___

Membership _____ $1.00

Subscription to Monthly Magazine (WHITE CIRCLE NEWS) per year _____ $3.00

Voluntary Contribution _____

I can volunteer some of my time to aid the WHITE CIRCLE in getting under way.

(Signed) (Print Name) _____

NAME _____

ADDRESS _____ PHONE _____

CITY _____ STATE _____

(Note: Tear off and mail to Headquarters with Your Remittance.)"

There is no evidence in this case of any commotion or disturbance on the street and there is no type of breach of the peace whatsoever. There is no evidence that anyone was actually upset or disturbed at the meeting on January 6, 1950 or at the time of the distribution of the petitions.

The Opinion Below

The opinion has been reported and is cited as *The People of the State of Illinois,* Appellee v. *Joseph Beauharnais,* Appellant, 408 Ill. 512.

Jurisdiction

Jurisdiction of this court is invoked under 28 U. S. C. Sec. 1257 Sub. Sec. 3. On the 19th day of March 1951 the Supreme Court of the State of Illinois denied the petition for rehearing. Timely application herein has been made.

QUESTIONS PRESENTED

1

Is the Illinois statute, Sec. 224 A of Div. 1 of the Criminal Code, Chapter 38, Paragraph 471 of the Illinois Revised Statutes of 1949 as construed and/or applied by the Supreme Court of Illinois invalid, nevertheless, because it infringes upon the constitutional guarantee of free speech, press and of assemblage as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States?

2

Is the Illinois Statute void as being in controvention of the due process clause of the Fourteenth Amendment to the Constitution of the United States in that it is vague and indefinite and does not adequately apprise the citizen of the offense charged?

Reasons Relied On for Allowance of the Writ

At the outset the American Civil Liberties Union and its counsel appearing herein wish it to be distinctly understood that by their action in filing this petition, that they neither condone nor agree with the allegations made by the Petitioner in his publication and as a matter of fact the record of both the American Civil Liberties Union and its counsel shows that both have always been opposed to racism of any kind and the American Civil Liberties Union has appeared often, by way of friend of the court, in cases pending before this Honorable Court in matters

which clearly indicate its position. Nevertheless, it has been the policy of the American Civil Liberties Union to consider all cases raising fundamental questions of constitutional law as extremely important. As so often has been said, if the right of free speech and press means anything at all it means freedom for the expression of opinions we hate as well as those with which we agree. It is because we view with alarm this type of statute that we undertake to file this petition. Illinois is not the only state which has such a law. As a matter of fact a similar law in the State of New Jersey was struck down by the court, see *State* v. *Klapprott*, 127 N. J. L. 395. Massachusetts also has a similar law (Gen. Laws, Ch. 272, Sec. 98c) as do many other states. Practically all of them are similarly constituted and are known either as "group" or "race libel laws". It is of the utmost importance, therefore, for this court to determine the constitutionality of such provisions. These provisions, on their face, purport to interfere and prohibit expression of opinion. While no one can dispute the good intentions of the proponents of such measures they still, nevertheless, must meet with constitutional favor. One of the great philosophies underlying all of our rights is the clear and present danger theory. In the case at bar the State of Illinois alleged that the pamphlet or petition itself is sufficient evidence of the clear and present danger and comes within the "fighting words" theory of *State* v. *Chaplinsky*, 315 U. S. 658. Because of the seeming contradiction between the two opinions of the highest courts of the State of New Jersey and the State of Illinois; because of the great possibility of additional cases of this nature which will from time to time arise; because of the obvious error made by the Illinois court in failing to apply the clear and present danger theory and because at the trial the court refused to instruct the jury on the clear and present danger theory, it is of the utmost public importance for the court to review this case and to render an opinion.

Wherefore, your Petitioner prays that a writ of certiorari be issued out of and under the seal of this court directed to the Justices of the Supreme Court of Illinois commanding that court to certify and send to this court for review and determination as provided by law, this cause and a complete transcript of the record and all of the proceedings had therein and that the judgment of said Supreme Court of Illinois affirming the judgment of the municipal court of the City of Chicago be set aside and be reversed and for such other and further relief in the premises that this court may deem proper.

I hereby certify that I have examined the foregoing petition for writ of certiorari and that in my opinion it is well founded and the cause is one in which the petition should be granted.

Respectfully submitted,

ALFRED A. ALBERT,
Attorney-at-Law,
c/o American Civil Liberties Union,
170 Fifth Avenue,
New York, N. Y.

IN THE

Supreme Court of the United States

OCTOBER TERM (1950)

JOSEPH BEAUHARNAIS,
Petitioner,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

POINTS TO BE ARGUED

I

Is the Illinois statute, Sec. 224 A of Div. 1 of the Criminal Code, Chapter 38, Paragraph 471 of the Illinois Revised Statutes of 1949 as construed and/or applied by the Supreme Court of the State of Illinois invalid, nevertheless, because it infringes upon the constitutional guarantee of free speech, press and of assemblage as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States?

II

Is the Illinois Statute void as being in contravention of the due process clause of the Fourteenth Amendment to the Constitution of the United States in that it is vague and indefinite and does not adequately apprise the citizen of the offense charged?

ARGUMENT

I

Is the Illinois Statute, Sec. 224 A of Div. 1 of the Criminal Code, Chapter 38, Paragraph 471 of the Illinois Revised Statutes of 1949 as construed and/or applied by the Supreme Court of the State of Illinois invalid, nevertheless, because it infringes upon the constitutional guarantee of free speech, press and of assemblage as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States?

It is a well settled law that the police power of a state extends to the point where there is no infringement of the greater constitutional guarantee of free speech, press and assemblage. Practically, all disputes concerning the validity of statutes authorized by the police power of a state center around the line of demarcation. The State in its exercise of its power may regulate free expression but it cannot arbitrarily prohibit it. Free expression may be prohibited, however, only in such cases where there is a clear, present and imminent danger of a breach of the peace. The evidence is clear in this case that there is nothing about the conduct of the persons distributing the literature or of the defendant, himself, which created in any sense any danger that a breach of the peace would occur. This is in contrast to the *Chaplinsky* case, 315 U. S. 658, in which the Supreme Court of the State of New Hampshire found its statute applied only where there was a clear and present danger and that under the many facts in the *Chaplinsky* case there was such clear and present danger. This court will recall in that case the statement uttered by the defendant was uttered at a time when he was being hustled off to arrest in what appeared to be a hotly contested matter. No such situation presents itself in this case and if there can be any finding of clear and present danger it must be within the four corners of the

petition itself (Exhibit 3). The Supreme Court of Illinois mis-applied and misinterpreted the meaning of the *Chaplinsky* case and of the theory of clear and present danger for the court uses the following language:

> "Any ordinary person could only conclude from the libelous character of the language that a clash and riot *would eventually result* between the members of the 'White Circle League of America' and the Negro Race."

The court specifically finds that there was a danger which might eventually occur but there is no finding and no ruling by either the trial court or the Supreme Court of the State of Illinois that there is any clear and present danger. Any statute which tends to prohibit speech can be valid only on the basis that there would be an imminent danger. Look at the statute itself. In this case it is to be noted that there are two possible bases for complaint.

There is one under which this petitioner was prosecuted and there is another where such conduct of the defendant is productive of breach of the peace or riots. The petitioner was not charged with doing certain things which were productive of a breach of the peace or riots. He is simply charged with publishing, presenting and exhibiting certain lithographs in violation of that section of the statute which merely refers to so called criminally libelous words. Clearly it was the intent of the legislature of the State of Illinois to make two separate bases for complaint. The Supreme Court of Illinois, did not comment on this separation. Therefore, we have to deal only with this case on the basis that there is nothing in the evidence and that there is no charge that any breach of the peace or riots would result from the publication of the particular lithographs. Furthermore, it should be called to the attention of the court that the Supreme Court of the State of Illinois, in its opinion, stated:

> "The very statute which defendant challenges as unconstitutional was upheld in the case of Bevins v.

Prindable, 39 Fed. Supp. 708 and affirmed by the U. S. Supreme Court in a memorandum opinion at 314 U. S. 573."

However, a careful check of the *Bevins* case clearly indicates that the court did not so rule. As a matter of fact, the court specifically ruled as follows (p. 712):

> "In the view we take of the case under the evidence we do not find it now necessary to consider the constitutionality of the statute. In passing, however, we do say it is not clearly apparent that the statute in question is unconstitutional."

The Illinois court then goes on to discuss the question of vagueness which is further discussed in this brief under Point II of the argument. In the *Bevins* case the only thing that the Supreme Court affirmed was the specific finding of the district court that no case was made out by the Petitioners for injunctive relief and in no way can the affirmance of judgment by the Supreme Court in the *Bevins* v. *Prindable* case be taken to mean that the statute here drawn in question was constitutional. As a matter of fact, this court in *Winters* v. *New York*, 333 U. S. 507, 68 Sup. Ct. 665, cites the New Jersey case of *Klapprott* v. *New Jersey*, 127 N. J. L. 395, in an apparently favorable manner. The New Jersey case held that a similar statute was unconstitutional on its face. As a matter of fact, in the *Bevins* case the United States District Court opined that the constitutionality of this section of the Illinois law should be ruled upon, first, by the highest court in the State of Illinois.

In *Terminiello* v. *City of Chicago*, 337 U. S. 713, this court stated:

> "Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are or even stir people to anger."

The ordinance and the charge in the *Terminiello* case was even more carefully drawn than this one and dealt specifically with creation of breach of the peace. The ruling of the Supreme Court in the *Terminiello* case, however, was confined to the application of the ordinance to the conduct of the defendant. It is our contention here that this statute first of all on its fact is invalid and void because it is prohibitive of free speech, press and assemblage, and, secondly, that if our first proposal is not sustainable then as construed and applied, the Illinois law violates the petitioner's right of free speech, press and assemblage because there was no evidence of clear and present danger and because the information under which this defendant was charged does not charge that his remarks were productive of riots or breach of the peace.

There remains the question of the application of this court's opinion in the recently decided *Dennis* case, June 4th, 1951. There, this court held the issue of clear and present danger was to be decided by the court and not by the jury. At least up until that time, it had always been supposed that the determination of the factual situation with regard to clear and present danger was one for the fact finding body, namely, the jury or a Judge sitting without jury. In the case at bar the court refused to instruct the jury on this matter (Par. R. p. 36, nos. 15, 16). The Supreme Court of Illinois, in its opinion, does not comment on the court's refusal to so instruct the jury, but finds simply that the Illinois statute is one of those "fighting word" statutes, but it is clear on the reading of the record and of the opinion in this case that neither the Trial Court nor the Supreme Court found as a fact or a matter of law that there was a clear and present danger. Taken together with the separation of the statute, which makes two offenses, we find that the *Dennis* case is not decisive of this case.

The defendant does not waive the argument that the finding of clear and present danger is a finding of fact to be found by the jury rather than by the court. The defend-

ant still maintains that no court could rule as a matter of law when there is or is not a clear and present danger. That since speech is limited by the existence of such threat the determination that that said existence is one clearly of fact and therefore the sole province of the fact finding agency.

II

Is the Illinois Statute void as being in contravention of the due process clause of the Fourteenth Amendment to the Constitution of the United States in that it is vague and indefinite and does not adequately apprise the citizen of the offense charged?

This court has enunciated several times the standards which must be applied in determining whether or not a statute meets the test of the due process clause of the Fifth Amendment and the requirement of the Sixth Amendment concerning the right of the defendant to be fully informed of the charge against him. Both such provisions have been made applicable to the states by virtue of the Fourteenth Amendment.

In *Winters* v. *New York*, cited supra, this court struck down a New York statute on obscenity which made it an offense to publish stories principally made up of crimes, lust, etc. The court said that the Statute was so vague that men of reasonable understanding could not determine when an offense had been committed. This followed the theory as set forth in the court in *Connally* v. *General Construction Co.*, 269 U. S. 385, 46 S. C. 126, and the well known case of *Cantwell* v. *Conn.*, 310 U. S. 296, 60 Sup. Ct. 900. See also the late case of *Jordan* v. *DeGeorge*, 71 Sup. Ct. 703, decided May 7th, 1951.

Let us then for the moment analyze the statute in question and separate it into two parts, (a) that it simply means it is an offense to manufacture, sell or offer for sale, etc. * * * which said publication or exhibition exposes

the citizens of any race, color, creed or religion to contempt, derision, or obloquy, and (b) * * * which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision or obloquy, which said publication or exhibition is productive of breach of the peace or riots. The defendant is charged with violation under (a) and not with violation under (b). Under this part of the statute conduct which may be perfectly innocent conduct becomes unlawful. It is our contention that a man has a right to criticize a religious group because of its activities, or a racial group because of its activities. A non-Zionist Jew has the right to take to task a Zionist Jew and in so doing may use the words "Zionist Jew". He may use such words so as to group all Zionist Jews together and not any one in particular. Likewise the Negro race will have a perfect right to criticize the conduct of whites and conversely white people have the right to criticize Negroes. We should not interfere with the right of Protestants to criticize Catholics and vice versa.

When viewing the statute, minus the provision concerning breach of peace or riots, we find that any application of this statute would possibly interfere with some of these matters above enumerated. As was pointed out in the brief filed by Petitioner in the Supreme Court of the State of Illinois, the constant derision of American citizens of Japanese ancestry would subject practically every single newspaper in the State of Illinois to prosecution under this law and, to lay, present criticism of Chinese whether you call them Communist Chinese or non-Communist Chinese would subject anyone to prosecution. The same may be applied to the Russian people. Under what circumstances can any individual be apprised of what is unlawful under this statute? Again, the court below cites *Bevins* v. *Prindable* to support its contention that this statute was constitutional and was not void for vagueness. The United States District Court in the *Bevins* case said as follows:

> "With reference to the Statute plaintiff says it is vague and indefinite. There is truth in the charge but

> the statute deals with the type of offense that defies exact definitiveness. In that respect it is similar to statute creating the offense of criminal libel, Chapter 38, Sec. 402, Illinois revised Statutes 1939. Whether a statute of the State of Illinois is valid which makes the defamation of a class a criminal offense would seem first to be a question of the courts of Illinois. This statute does not subject the plaintiffs to previous restraint such as received the condemnation of the Supreme Court in Lowell v. Griffin, 303 U. S. 444, etc."

The court went on to say that the plaintiff in the *Bevins* case had ample opportunity to test the constitutionality of the statute in the State Court of Illinois wherein criminal prosecution was then pending and in the next to the last paragraph the District Court said as follows:

> "The precise question presented to us now takes form as follows: Should an application for an interlocutory injunction restraining state officers from enforcing a state criminal statute be allowed where the statute is not clearly unconstitutional and where the evidence shows that though some injuries and loss may be suffered by plaintiffs, through the enforcement of the statute, which may, because of their nature, be irreparable, it fails to appear that such injuries and loss need be more than slight or inconsequential? We think the question must be answered in the negative and the application for interlocutory injunction denied."

The view that we take is a fair view and what has been said concerning subdivision (a) of the Illinois statute may also be said concerning subdivision (b). The fact that use of language such as "which is productive of breach of the peace or riots" is added in no way cures the defect of vagueness because it does not amplify or explain the words used in the statute, such as "contempt, derision or obloquy".

See also *Klapprott* v. *State of New Jersey*, 127 N. J. L. 395.

CONCLUSION

In conclusion the Illinois statute fails because

(1) As interpreted by the Illinois Court it is prohibitive of free speech, press and assemblage even in the absence of clear and present danger.

(2) Even as construed and applied in the present case it operates so as to deprive the petitioner of his constitutional rights.

(3) The *Dennis* case is not decisive of this case because here there is no finding of fact or ruling of law by the Court that any clear and present danger exists.

(4) It is void on its face for vagueness.

(5) Under any circumstances, the defendant was not charged with conduct which was productive of breach of the peace or riots and there is no evidence to support any such conclusions.

American Civil Liberties Union and its counsel herein wish again to remind this court that we are in no way in favor of the utterances made by this petitioner and that we would oppose such utterances by combating them in the proper forum. Such utterances ought to be refuted. However, when it comes to the question of this petitioner's words or right to publish the expressions herein complained of this places the question on an entirely different footing and we stand four-square on that issue.

"I may disagree with what you say but I will give my life for your right to say it."

Respectfully submitted,

ALFRED A. ALBERT,
Attorney-at-Law,
c/o American Civil
Liberties Union,
170 Fifth Avenue,
New York, N. Y.

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IN THE

Supreme Court of the United States

OCTOBER TERM (1951)

No. 118

JOSEPH BEAUHARNAIS,

Appellant,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

APPELLANT'S BRIEF

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IN THE

Supreme Court of the United States

OCTOBER TERM (1951)

JOSEPH BEAUHARNAIS, Appellant, v. THE PEOPLE OF THE STATE OF ILLINOIS, Appellee.	No. 118

APPELLANT'S BRIEF

To the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Introductory Statement

The American Civil Liberties Union through its counsel appearing herein on behalf of the appellant, definitely rejects the views expressed by the appellant in his publications which form the basis of this prosecution. The Union undertakes this case solely because it believes that the Illinois statute in question on its face and as construed and applied is violative of the constitutional guarantees of free speech, free press, free worship and of due process.

Many states in attempting to suppress racial and religious antagonism have enacted similar statutes. They are all aimed at expressions of opinion. All invasions of the rights of free speech, press, worship and assembly must be thoroughly examined. Thus, while we detest what is here published we fight for the right of publication.

Statement of the Facts

The appellant, Joseph Beauharnais, is here seeking to overrule the judgment of the Supreme Court of the State of Illinois which affirmed judgment of guilty in the Municipal Court, Chicago. On May 14, 1950, Beauharnais was found guilty of violation of Section 224A of Division 1 of the Criminal Code (Ill. Rev. Stat., 1949, Ch. 38, p. 471) as follows:

> "It shall be unlawful for any person, firm or corporation to manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place in this state any lithograph, moving picture, play, drama or sketch, which publication or exhibition portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy, or which is productive of breach of the peace or riots. Any person, firm or corporation violating any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50.00), nor more than two hundred dollars ($200.00)."

The complaint charged Beauharnais as follows:

> "On January 7, 1950, at the City of Chicago, did unlawfully, publish, present and exhibit in public places, lithographs, which publications portrayed depravity, criminality, unchastity or lack of virtue of citizens of Negro race and color and which exposes citizens of Illinois of the Negro race and color to contempt, derision, or obloquy, which more fully appears in Exhibit A, which is attached hereto and made a part hereof."

The appellant was found guilty by a jury and was fined $200.00.

During the course of the trial the appellant requested that the following instructions be given the jury:

"(15) The jury is further instructed that even though the article complained of induced a condition of unrest and dissatisfaction with conditions as they are, or even stirred the reader to anger, still they must find the defendant not guilty unless they further find beyond reasonable doubt that the article complained of was likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest.

(16) The court instructs the jury that free speech and free press is guaranteed by the Constitution of the United States and also by the Constitution of the State of Illinois. A free press may best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. A free press is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech and of the press, though not absolute, are, nevertheless, protected against censorship or punishment unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance and unrest. There is no room under our constitution for a more restrictive view. For the alternative would lead to standardization of ideas, either by legislature, courts or dominant political or community groups. No conviction can be had of the defendant in this case, even though the jury believe that the article complained of stirred people to anger, invited public dispute or brought about a condition of unrest" (R. 29).

These requests were denied and the appellant duly objected and took exception to these denials. The appellant timely moved for judgment of acquittal and/or new trial on the

following grounds (as well as others) (R. 30, 31, 32, Nos. 1, 2, 3, 7, 12, 13) as follows:

"(1) That Paragraph 471, Section 244a of Chapter 38 of the Illinois Revised Statutes is unconstitutional in that it violates the first amendment to the Constitution of the United States and also Article 2, Paragraph 4 of the Constitution of the State of Illinois.

(2) That Paragraph 471, Section 224a of Chapter 38 of the Illinois Revised Statutes is unconstitutional in that it violates the due process clause of the Fourteenth Amendment of the Constitution of the United States and also Section 2 of Article 2 of the Constitution of the State of Illinois.

(3) That the right of defendant to manufacture, publish and present the lithograph in question (People's Exhibit 3) was protected by the First Amendment to the Constitution of the United States and also by Article 2, Paragraph 4 of the Constitution of the State of Illinois, and by Section 17 of Article 2 of the Constitution of the State of Illinois.

(7) That to attempt a charge of violation of said section of the statute by the publishing or exhibiting of the lithograph in question (People's Exhibit 3) is in violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States and the Constitution of the State of Illinois.

(12) The court erred in refusing to give the following instruction to the jury as requested by defendant. (This paragraph of the motion was the same as Request No. 16 appearing (supra) and is not set forth herein.)

(13) The court erred in refusing to give the following instruction to the jury as requested by defendant. (This paragraph of the motion was the same as Request No. 15 appearing (supra) and is not set forth herein.)"

The Trial Court denied this motion and the appellant appealed to the Illinois Supreme Court which on January 18, 1950, affirmed the judgment (*People of the State of*

Illinois v. *Joseph Beauharnais*, 408 Ill. 512). That Court denied a motion for rehearing on March 9, 1951, and on October 15, 1951, this Court granted certiorari.

On January 6, 1950, there was a meeting of the White Circle League in Chicago. The appellant chaired the meeting, which was called for the purpose of obtaining volunteers to carry placards, distribute leaflets and obtain signatures. One Latimore attended the meeting and offered to distribute leaflets and obtain signatures the following day. Beauharnais instructed Latimore to wear a placard (sandwich-style about the person). On the placard appeared the following words:

> "PRESERVE AND PROTECT WHITE NEIGHBORHOODS, SIGN PETITIONS HERE. SPONSORED BY THE WHITE CIRCLE LEAGUE OF AMERICA" (Govt. Ex. 2, R. 10).

Beauharnais also passed out to each volunteer a petition to be signed by passersby as follows (Govt. Ex. 3, R. 10a):

> "PRESERVE AND PROTECT WHITE NEIGHBORHOODS!
> FROM THE CONSTANT AND CONTINUOUS INVASION,
> HARASSMENT AND ENCROACHMENT BY
> THE NEGROES
>
> (We want two million signatures of White men and women)
>
> PETITION
>
> To The Honorable Martin H. Kennelly
> and City Council of the City of Chicago
>
> WHEREAS, the white population of the City of Chicago, particularly on the South Side of said city, are seething, nervous and agitated because of the constant and continuous invasion, harassment and encroachment by the Negroes upon them, their property and neighborhoods and—
>
> WHEREAS, there have been disastrous incidents within the past year, all of which are fraught with grave consequences and great danger to the Peace and Security of the people, and

WHEREAS, there is great danger to the Government from communism which is rife among the Negroes, and

WHEREAS, we are not against the Negro; we are for the white people and the white people are entitled to protection:—

We, the undersigned white citizens of the City of Chicago and the State of Illinois, hereby petition the Honorable Martin H. Kennelly, Mayor of the City of Chicago and the Aldermen of the City of Chicago, to halt the further encroachment, harassment and invasion of white people. their property, neighborhoods and persons, by the Negro—through the exercise of the Police Power; of the Office of the Mayor of the City of Chicago, and the City Council.

WANTED

ONE MILLION SELF-RESPECTING WHITE PEOPLE IN CHICAGO TO UNITE UNDER THE BANNER OF THE WHITE CIRCLE LEAGUE OF AMERICA to oppose the National Campaign now on and supported by TRUMAN'S INFAMOUS CIVIL RIGHTS PROGRAM and many Pro Negro Organizations to amalgamate the black and white races with the object of mongrelizing the white race!

THE WHITE CIRCLE LEAGUE OF AMERICA is the only articulate white voice in America being raised in protest against Negro aggressions and infiltrations into all white neighborhoods. The white people of Chicago MUST take advantage of this opportunity to become UNITED. If persuasion, and the need to prevent the white race from becoming mongrelized by the Negro will not unite us, then the aggressions * * * rapes, robberies, knives, guns and marijuana of the Negro, SURELY WILL.

The Negro has many national organizations working to push him into the midst of the white people on many fronts. The white race does not have a single organization to work on a NATIONAL SCALE to make its wishes articulate and to assert its natural rights to self-pres-

ervation. THE WHITE CIRCLE LEAGUE OF AMERICA proposes to do the job. WE ARE NOT AGAINST THE NEGRO!

WE ARE FOR THE WHITE PEOPLE!

We must awaken and protect our white families and neighborhoods before it is too late. Let us work unceasingly to conserve the white man's dignity and rights in America.

THE WHITE CIRCLE LEAGUE OF AMERICA, INC.—Joseph Beauharnais, Pres.—FR 2-8533, Suite 808, 82 W. Washington St. VOLUNTEERS NEEDED TO GET 25 SIGNATURES ON PETITION!. COME TO HEADQUARTERS!

I wish to be enrolled as a member in THE WHITE CIRCLE LEAGUE OF AMERICA and I will do my best to secure ten (10) or more members.

THE FIRST LOYALTY OF EVERY WHITE PERSON IS TO HIS RACE. ALL THE COMBINED PRO-NEGRO FORCES HAVE HURLED THEIR ULTIMATUM INTO THE FACES OF THE WHITE PEOPLE. WE ACCEPT THEIR CHALLENGE.

THEY CANNOT WIN!

IT WILL BE EASIER TO REVERSE THE CURRENT OF THE ATLANTIC OCEAN THAN TO DEGRADE THE WHITE RACE AND ITS NATURAL LAWS BY FORCED MONGRELIZATION.

THE HOUR HAS STRUCK FOR ALL NORMAL WHITE PEOPLE TO STAND UP AND FIGHT FOR OUR RIGHTS TO LIFE, LIBERTY AND THE PURSUIT OF HAPPINESS.

JOSEPH BEAUHARNAIS"

Each volunteer was also given 500 leaflets to pass out to signers (Govt. Ex. 1):

"APPLICATION FOR 1950 MEMBERSHIP

THE WHITE CIRCLE LEAGUE OF AMERICA, INC.
(Not For Profit)

Mail to—
THE WHITE CIRCLE LEAGUE OF AMERICA, INC.
82 W. Washington St.
Chicago 2, Illinois
Tel. FR 2-8533

Date_____ 19__

Membership _____ $1.00

Subscription to Monthly Magazine (WHITE CIRCLE NEWS) per year _____ 3.00

Voluntary Contribution _____

I can volunteer some of my time to aid the WHITE CIRCLE in getting under way.

(Signed) (Print Name) _____

NAME _____

ADDRESS _____ PHONE _____

CITY _____ STATE _____

(Note: Tear off and mail to Headquarters with Your Remittance.)"

There is no evidence in this case of any commotion or disturbance on the street and there is no type of breach of the peace nor incitement to breach of peace. There is no evidence that anyone was actually upset or disturbed at the meeting on January 6, 1950, or at the time of the distribution of the petitions.

Latimore and others were instructed by Beauharnais as follows: "We don't want any violence while these peti-

tions are being passed out. We just want to get a lot of signatures and we want to get a large number of members * * * those getting signatures should not let a crowd gather and shouldn't disrupt the movement of people on the sidewalk" (R. 5).

On the following day, January 7, 1950 (which is the date referred to in the complaint), one McFarland, a Government witness, saw the placard (Ex. 2) on a man standing on a public street (State and Madison Streets, Chicago). He saw two other men with the placarded man, one of whom appeared to be signing. The other had Exhibit 3 in his hand and dropped it when walking across the street. McFarland picked up Exhibit 3 and identified the same during the trial.

The Government presented two other witnesses, both eminent Negroes from the City of Chicago, and each testified that he had never been accused of any offense or any crime and denied all the allegations alleged in the petition (Govt. Ex. 3). The appellant made offers of proof through these two witnesses in attempting to prove the defense of truth (these offers were rejected and excluded, R. 16, 17).

Beauharnais testified that he was the organizer, founder, president of the White Circle League of America, an Illinois non-profit corporation organized for the purpose of maintaining and safeguarding the dignity, social edicts, custom, heritage, rights and the way of life of the white race in America. There was no dispute about Beauharnais running the meeting and passing out the literature for distribution, but he was not on the street himself and did not carry placards or distribute any leaflets on the street. Objections to the appellant's testimony concerning the meaning of the words used in Exhibit 3 and his attempts to prove the allegations were sustained (R. 19, 20, 21).

POINTS FOR ARGUMENT

I

The Illinois Statute, Sec. 224A of Div. 1 of the Criminal Code, Chapter 38, Paragraph 471 of the Illinois Revised Statutes of 1949 as construed and/or applied by the Supreme Court of Illinois is invalid, nevertheless, because it infringes upon the constitutional guarantee of free speech, press and of assemblage as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States.

II

The Illinois Statute is void as being in contravention of the due process clause of the Fourteenth Amendment to the Constitution of the United States in that it is vague and indefinite and does not adequately apprise the citizen of the offense charged.

ARGUMENT

I

The Illinois Statute, Sec. 224A of Div. 1 of the Criminal Code, Chapter 38, Paragraph 471 of the Illinois Revised Statutes of 1949 as construed and/or applied by the Supreme Court of Illinois is invalid, nevertheless, because it infringes upon the constitutional guarantee of free speech, press and of assemblage as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States.

For the first time this Court is faced with one of the many so-called "race" or "group libel laws". The purport of these statutes as a whole and the Illinois statute in particular, is two-fold. First, to extend the civil libel law to groups classed because of race, color, creed, religion or ancestry. Second, to make violation of the law a criminal offense punishable by fine or imprisonment.

Because the statute seeks to prohibit certain publications (in various forms), it thus draws into issue the question of its constitutionality.

This Court has ruled consistently that the clear and present danger doctrine is to be applied in all speech cases. That the state may protect against disorder, riot or breach of the peace is fundamental. That the state may regulate speech, press or worship but cannot arbitrarily prohibit it is also well settled (*Kunz* v. *New York*, 340 U. S. 290). Speech and press may be punished only under certain conditions and that is where such speech or press creates an imminent clear and present danger of breach of the peace.

The Illinois statute does not regulate. It prohibits certain expression. The Illinois Supreme Court justifies constitutionality on the "fighting words" theory expressed by this Court in *Chaplinsky* v. *State of New Hampshire*, 315 U. S. 658, and apparently rules that there need be no finding or ruling of clear and present danger. The statute in the *Chaplinsky* case provided in part as follows: "No person shall address any offensive, derisive or annoying language to any other person on any public street or way." The Supreme Court of New Hampshire ruled that the statute applied and was valid only when as a result of such use of such language a breach of the peace was imminent. It was this ruling that was reviewed by this Court. Chaplinsky was punished not for words that were used in the abstract or in a vacuum but for words used "in a face to face situation", which created a clear and present danger. That is totally different than saying that mere "fighting words" in a vacuum are punishable.

The Supreme Court of Illinois misapplied and misinterpreted the *Chaplinsky* case. It found that there was an eventual danger but not a clear present and imminent danger. The Court said as follows: "Any ordinary person could only conclude from the libelous character of the language that a clash and riot would eventually result between the members of the White Circle League of

America and the Negro Race" (R. 40). Indeed there is no evidence at all of any imminent threat, merely a man carrying a placard on a street, passing out leaflets and obtaining a signature, and that is all there is, even though the Illinois Court says that the charge included the solicitation of volunteers and the general direction of the movement by the appellant (R. 38). This adds nothing more to the imminency of any breach of the peace. It adds absolutely nothing of any consequence. If there be any doubt of the Illinois Court's interpretation it apparently sustained the Trial Court's refusal to grant requested instructions which called for the application of the clear and present danger theory (R. 29). In addition, the statute has at least two component parts, either one of which could serve as a basis for complaint.

There is one under which this petitioner was prosecuted and there is another where such conduct of the defendant is productive of breach of the peace or riots. The petitioner was not charged with doing certain things which were productive of a breach of the peace or riots. He is simply charged with publishing, presenting and exhibiting certain lithographs in violation of that section of the statute which merely refers to so-called criminally libelous words. Clearly it was the intent of the legislature of the State of Illinois to make two separate bases for complaint. The Supreme Court of Illinois did not comment on this separation. Therefore, we have to deal only with this case on the basis that there is nothing in the evidence and that there is no charge that any breach of the peace or riots would result from the publication of the particular lithographs. Furthermore, it should be called to the attention of the Court that the Supreme Court of the State of Illinois, in its opinion, stated:

> "The very statute which defendant challenges as unconstitutional was upheld in the case of Bevins v. Prindable, 39 Fed. Supp. 708, and affirmed by the U. S. Supreme Court in a memorandum opinion at 314 U. S. 573."

However, a careful check of the *Bevins* case clearly indicates that the Court did not so rule. As a matter of fact, the Court specifically ruled as follows (p. 712):

> "In the view we take of the case under the evidence we do not find it now necessary to consider the constitutionality of the statute. In passing, however, we do say it is not clearly apparent that the statute in question is unconstitutional."

The Illinois Court then goes on to discuss the question of vagueness which is further discussed in this brief under Point II of the argument. In the *Bevins* case the only thing that the Supreme Court affirmed was the specific finding of the District Court that no case was made out by the petitioners for injunctive relief and in no way can the affirmance of judgment by the Supreme Court in the *Bevins* v. *Prindable* case be taken to mean that the statute here drawn in question was constitutional. As a matter of fact, this Court in *Winters* v. *New York*, 333 U. S. 507, 68 Sup. Ct. 665, cites the New Jersey case of *Klapprott* v. *New Jersey*, 127 N. J. L. 395, in an apparently favorable manner. The New Jersey case held that a similar statute was unconstitutional on its face. In the *Bevins* case the United States District Court opined that the constitutionality of this section of the Illinois law should be ruled upon, first, by the highest Court in the State of Illinois.

In *Terminiello* v. *City of Chicago*, 337 U. S. 713, this Court stated:

> "Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are or even stir people to anger."

The ordinance and the charge in the *Terminiello* case was even more carefully drawn than this one and dealt specifically with creation of breach of the peace. The rul-

ing of the Supreme Court in the *Terminiello* case, however, was confined to the application of the ordinance to the conduct of the defendant. It is our contention here that this statute first of all on its face is invalid and void because it is prohibitive of free speech, press and assemblage, and, secondly, that if our first proposal is not sustainable then as construed and applied, the Illinois law violates the petitioner's right of free speech, press and assemblage because there was no evidence of clear and present danger and because the information under which this defendant was charged does not charge that his remarks were productive of riots or breach of the peace.

There remains the question of the application of this Court's opinion in the recently decided *Dennis* case, *Dennis* v. *U. S.*, 341 U. S. 495. There, this Court held the issue of clear and present danger was to be decided by the Court and not by the jury. At least up until that time, it had always been supposed that the determination of the factual situation with regard to clear and present danger was one for the fact finding body, namely, the jury or a Judge sitting without jury. In the case at bar the Court refused to instruct the jury on this matter (R. 29, Nos. 15, 16). The Supreme Court of Illinois, in its opinion, does not comment on the Court's refusal to so instruct the jury, but finds simply that the Illinois statute is one of those "fighting word" statutes, but it is clear on the reading of the record and of the opinion in this case that neither the Trial Court nor the Supreme Court found as a fact or a matter of law that there was a clear and present danger. Taken together with the separation of the statute, which makes two offenses, we find that the *Dennis* case is not decisive of this case.

The appellant does not waive the argument that the finding of clear and present danger is a finding of fact to be found by the jury rather than by the Court. The appellant still maintains that no Court could rule as a matter of law when there is or is not a clear and present danger.

That since speech is limited by the existence of such threat the determination that said existence is one clearly of fact and therefore the sole province of the fact finding agency.

The Illinois Court finally says: "the libelous and inflammatory language used in Exhibit A (Govt. Ex. 3) was designed to breed hatred against the Negro race and is not of such character as entitles defendant to the protection of freedom of speech guaranteed by the State and Federal Constitutions" (R. 41).

If the Court meant to prematurely agree with the dissent in *Kunz* v. *New York*, cited *supra*, then it ignores the fundamental proposition that when considering the constitutionality of a law on its face the facts in the case are not in issue. Facts are in issue when the Court comes to a consideration of determining whether or not a statute as construed and applied is void or valid. The social value of words is a matter of opinion and if the Illinois Court is right almost any disagreeable expression could be prohibited on the basis of its statement.

II

The Illinois Statute is void as being in contravention of the due process clause of the Fourteenth Amendment to the Constitution of the United States in that it is vague and indefinite and does not adequately apprise the citizen of the offense charged.

This Court has enunciated several times the standards which must be applied in determining whether or not a statute meets the test of the due process clause of the Fifth Amendment and the requirement of the Sixth Amendment concerning the right of the defendant to be fully informed of the charge against him. Both such provisions have been made applicable to the states by virtue of the Fourteenth Amendment.

In *Winters* v. *New York*, cited *supra*, this Court struck down a New York statute on obscenity which made it an offense to publish stories principally made up of crimes, lust, etc. The Court said that the statute was so vague that men of reasonable understanding could not determine when an offense had been committed. This followed the theory as set forth in the Court in *Connally* v. *General Construction Co.*, 269 U. S. 385, 46 S. C. 126, and the well known case of *Cantwell* v. *Conn.*, 310 U. S. 296, 60 Sup. Ct. 900. See also the late case of *Jordan* v. *DeGeorge*, U. S. .

The Illinois statute can be divided into three sections, which three sections attempt to define the offense. To quote the statute and separate it as intended, counsel sets it forth below:

> "It shall be unlawful for any person, firm or corporation to manufacture, sell or offer for sale, advertise or publish, present or exhibit, any lithograph, moving picture, play, drama or sketch
>
> 1. which publication or exhibition portrays depravity, criminality, unchastity or lack of virtue of a class of citizens of any race, color, creed or religion.
>
> 2. which publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision or obloquy; or
>
> 3. which is productive of breach of the peace or riots."

The appellant has been charged with violation of 1 and 2 in a single complaint but he is not charged with violation under 3, and there is no evidence of any danger or imminent breach of the peace or riots.

Under number 1 the significant words are "portrays, depravity, criminality, unchastity or lack of virtue". Clearly, references to German Nazis, Italian Fascists, Japanese War Mongers so often referred to in the press during and after the war as murderers, criminals, butchers, liars, etc., must be punishable. Today references to the

Russian or Chinese Communists as liars, pagans, ungodly, etc., must also be punished. The New and the Old Testament, the works of Shakespeare and many of the classics must also be the subject of prosecution for they, too, refer to races and religions within the possible meaning of the words used in this part of the statute.

In this case, the Illinois Court said, "in fact it is hard to see how, with the libelous publication in evidence, any proof of good motives or justifiable ends could be introduced" (R. 40). The Court did not deal with the refusal of the Trial Court to allow cross-examination of Government witnesses in an attempt to prove truth, but truth is only a defense and has nothing to do with the offense such as the Massachusetts law provides.[1]

Under subdivision II of the statute the significant words are "exposes to contempt, derision or obloquy". This is far broader than the previous phraseology and amounts to a dragnet to draw in any remark whatsoever.

In *State* v. *Klapprott*, 127 N. J. L. 395, similar words were employed in a similar statute and the defendant was charged with making and publishing an attack on the Jews and the New Jersey Court in holding the statute void said in part at page 402:

> "It is our view that the statute, *supra*, by punitive sanction, tends to restrict what one may say lest by one's utterances there be incited or advocated hatred, hostility or violence against a group 'by reason of race, color, religion or manner of worship'. But additionally and looking now to strict statutory construction, is the statute definite, clear and precise as to be free from the constitutional infirmity of the vague and indefinite? That the terms 'hatred', 'abuse', 'hostility' are abstract and indefinite admits of no contradiction. When do they arise? Is it to be left to a

[1] Mass. Gen. Laws Ch. 282 Sec. 98C. "Whoever publishes any *false* written or printed matter with intent to maliciously promote hatred of any group of persons in the commonwealth because of race, color or religion shall be guilty of libel and shall be punished."

> jury to conclude beyond reasonable doubt when the emotion of hatred or hostility is aroused in the mind of the listener as a result of what a speaker has said? Nothing in our criminal law can be invoked to justify so wide a discretion. The Criminal Code must be definite and informative so that there may be no doubt in the mind of the citizenry that the interdicted act or conduct is illicit. The element of 'violence', mentioned in the statute, is universally understood to connote the unlawful exercise of force, i.e., a breach of the peace, but in the indictments before us neither breach of the peace nor resulting violence are alleged."

There is nothing in the case at bar alleging any breach of the peace nor is there any evidence of the same. And on page 403 the New Jersey Court went on to say:

> "Then these passions or emotions 'hatred', 'Hostility', etc., as well as being abstract, are relative in the individual. There is no norm to judge whether or when such emotion or passion comes into being. We do not think such phases of human reaction or emotion can be made a legitimate standard for a penal statute."

What the New Jersey Court stated is fully applicable here. When it comes to religion or race many people are extremely sensitive, many are offended and angered by any remark whatsoever. Sometimes even the way or manner in which words are spoken may show contempt, derision or obloquy.

It is our contention that a man has a right to criticize a religious group because of its activities, or a racial group because of its activities. A non-Zionist Jew has the right to take to task a Zionist Jew and in so doing may use the words "Zionist Jew". He may use such words so as to group all Zionist Jews together and not any one in particular. Likewise the Negro race will have a perfect right to criticize the conduct of whites and conversely white people have the right to criticize Negroes. We should not interfere with the right of Protestants to criticize Catholics and vice versa.

When viewing the statute, minus the provision concerning breach of peace or riots, we find that any application of this statute would possibly interfere with some of these matters above enumerated. As was pointed out in the brief filed by petitioner in the Supreme Court of the State of Illinois, the constant derision of American citizens of Japanese ancestry would subject practically every single newspaper in the State of Illinois to prosecution under this law and, today, present criticism of Chinese whether you call them Communist Chinese or non-Communist Chinese would subject anyone to prosecution. The same may be applied to the Russian people. Under what circumstances can any individual be apprised of what is unlawful under this statute? Again, the Court below cites *Bevins* v. *Prindable* to support its contention that this statute was constitutional and was not void for vagueness. The United States District Court in the *Bevins* case said as follows:

> "With reference to the Statute plaintiff says it is vague and indefinite. There is truth in the charge but the statute deals with the type of offense that defies exact definitiveness. In that respect it is similar to statute creating the offense of criminal libel, Chapter 38, Sec. 402, Illinois revised Statutes 1939. Whether a statute of the State of Illinois is valid which makes the defamation of a class a criminal offense would seem first to be a question of the courts of Illinois. This statute does not subject the plaintiffs to previous restraint such as received the condemnation of the Supreme Court in Lovell v. Griffin, 303 U. S. 444, etc."

The Court went on to say that the plaintiff in the *Bevins* case had ample opportunity to test the constitutionality of the statute in the State Court of Illinois wherein criminal prosecution was then pending and in the next to the last paragraph the District Court said as follows:

> "The precise question presented to us now takes form as follows: Should an application for an interlocutory injunction restraining state officers from en-

forcing a state criminal statute be allowed where the statute is not clearly unconstitutional and where the evidence shows that though some injuries and loss may be suffered by plaintiffs, through the enforcement of the statute, which may, because of their nature, be irreparable, it fails to appear that such injuries and loss need be more than slight or inconsequential? We think the question must be answered in the negative and the application for interlocutory injunction denied."

Under number 3 of the subdivision of the Illinois statute the important words are: "which is productive of a breach of the peace or riot". Again to reiterate, the appellant is not charged with doing anything which would be productive of a breach of the peace or riot, and there is no evidence to support any such statement. These added words in the statute do not correct any invalidity because of vagueness. If anything they simply add a third provision for prosecution. How can it be said that these words in any way explain contempt, derision or obloquy? The Illinois Court ruled that to show clear and present danger is unnecessary as this is a "fighting words" statute. This has been previously discussed under Point I of the argument.

CONCLUSION

In conclusion the Illinois statute fails because:

1. It is void on its face as it is in contravention of the constitutional guarantees of free speech, press and worship.

2. Even as construed and applied, it is void, as it invalidly deprives the appellant of his constitutional rights.

3. It is void as construed and applied because the Supreme Court of Illinois refused to apply the clear and present danger doctrine.

4. The Illinois statute is void on its face and fails to set a reasonable standard by which a citizen may be apprised of any offense.

5. Under any circumstances the appellant has not been charged with doing anything which was productive of a breach of the peace or riots or created any imminent danger thereof, and there is no evidence to support any such conclusion.

Therefore, it is respectfully urged that this Court reverse the judgment of the Supreme Court of Illinois and order that a judgment of not guilty be entered herein.

The American Civil Liberties Union and its counsel herein wish to say again to this Court, that we do not favor the utterances of the appellant and that we will do all in our power to oppose any such abhorrent utterances by combatting them in the proper forum. They ought not be left unanswered—and indeed the American Civil Liberties Union is one of the leading organizations that does make such answer—but when it comes to the issue of a right to publish these utterances the American Civil Liberties Union stands four-square on its established policy of defending the constitution and protecting the constitutional rights of all regardless of how we may disagree with them.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 118

JOSEPH BEAUHARNAIS,
Petitioner,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

PETITIONER'S REPLY BRIEF

(This brief is submitted pursuant to leave of Court granted November 28, 1951.)

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(This brief is submitted pursuant to leave of Court granted November 28, 1951.)

ARGUMENT

I

Petitioner's conviction was in violation of the First and Fourteenth Amendments to the Constitution because it was for speech in the absence of a finding of a clear and present danger by the courts or juries below.

A. A mere finding by the legislature of a clear and present danger is not a sufficient basis for restricting speech.

It should be noted at the outset that there is no specific finding by the Legislature of Illinois of a clear and present

danger. Indeed, the statute seems clearly to have been enacted in the absence of such a finding. At the time of its enactment—1917—it had not yet been held by this Court that the First Amendment applied to state action. The protection of the First Amendment as against state action was extended by this Court only in 1925 in the case of *Gitlow* v. *United States*, 268 U. S. 652. If any presumption can thus arise from the face of the legislation itself as to the existence of a legislative finding, it would therefore seem to be that the legislature did not in truth find a clear and present danger. Moreover, as pointed out in Appellant's Brief, the fact that group libel actually productive of a breach of the peace is separately punishable, would seem to indicate clearly that the legislature found no clear and present danger from other libels not so productive as here.

However, had the legislature made such a finding, it would nevertheless be incumbent upon the courts to see to it that the statute was constitutionally applied. Application would be constitutional only if there were a finding of a clear and present danger in each case. Precedent and reason support this contention. As this Court stated in *Dennis* v. *United States*, 341 U. S. 494, 514-515 (1951):

> "In other words, the Court must examine judicially the application of the statute to the particular situation, to ascertain if the Constitution prohibits the conviction. We held that the statute may be applied where there is a 'clear and present danger' of the substantive evil which the legislature had the right to prevent."

The absurdity of any other doctrine is at once apparent. The circumstances which a legislature might have found to create a clear and present danger in 1917 might be completely absent in 1951. For example, a legislature might have possibly made it constitutionally criminal in

1917 to advocate (subject to the certainty required by the due process provision of the Fourteenth Amendment) the supplying of arms and ammunitions to Germany. There might have been a clear and present danger from such advocacy then; there would be none in 1951 when indeed the United States officially acts on such policy. Therefore, it is clear that the facts and circumstances of each case must be considered in detail to determine if a clear and present danger existed at the time the utterance was made as well as when the statute was passed.

B. That the advocacy here punished may have had no societal value is irrelevant.

It was suggested on the oral argument that defendant's diatribe might have been punished purely because it had no societal value. It is submitted that any such criteria in free speech cases might render the First Amendment null and void. As this Court stated in *Winters* v. *New York*, 333 U. S. 507, 510:

> "Though we can see nothing of any possible value to society in these magazines, they are as much entitled to the protection of free speech as the best of literature."

To state that language has no societal value is merely to state that we believe its doctrine to be false and worthless. To permit judicial censorship of utterances based upon judicial judgment of the value of the utterance is to permit judicial censorship of the worst sort. Counsel for both parties hereto are unanimous in their denunciation of Beauharnais's views and beliefs, but that gives none of us any right to pass upon their societal value, anymore than anyone—even Beauharnais, if he were sitting on this Court—would have the right to declare that statements advocating racial equality and stressing the lynchings by the white man had no societal value in his

eyes. As Mr. Justice Jackson has aptly stated in *Thomas* v. *Collins:*

> "But it cannot be the duty, because it is not the right, of the state to protect the public against false doctrine. The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us. * * *
>
> *This liberty was not protected because the forefathers expected its use would always be* agreeable to those in authority or that its exercise always would be wise, temperate, or *useful to society.* As I read their intentions, this liberty was protected because they knew of no other way by which free men could conduct representative democracy." 323 U. S. 516, 545-6 (1945) (concurring opinion). (Emphasis supplied.)

C. There is no showing here of clear and present danger of violation of any law.

Illinois suggests that the clear and present danger in the case at bar is to be found in the (1) tendency (2) to incite (3) such prejudice (4) as results in violation of the Illinois Civil Rights Act. If this criterion of clear and present danger four times removed is to be the test, then clearly any propaganda against any law could be similarly outlawed, for does not every publication which criticizes a law tend to incite such prejudice as results in its violation—consider, for example, agitation against the law of Prohibition. Surely propaganda against it helped to incite its violation, but such an indirect effect through change in mental attitude can hardly be a reason for outlawing the original advocacy. As stated by Justices Brandeis and

Holmes in their celebrated concurring opinion in *Whitney* v. *California*, 274 U. S. 357, 376 (1927):

> "Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it. Condonation of a breach enhances the probability. Expressions of approval add to the probability. Propagation of the criminal state of mind by teaching syndicalism increases it. Advocacy of law breaking heightens it still further. *But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on.*" (Emphasis supplied.)

Cf. *Musser* v. *Utah*, 333 U. S. 95.

It may also be questioned whether a request that the City Council provide segregation in apartment houses—the only purpose of defendant's diatribe—would result in violation of the Illinois Civil Rights Act prohibiting discrimination in places of public accommodation.

The contention that advocacy of change in law can be constitutionally prohibited when passage of the law itself would clearly be illegal is as novel as it is startling. While we have never before heard it suggested that segregation is a violation of the Federal Civil Rights Act, and while we attorneys for the American Civil Liberties Union have never been so bold as to make that invalid suggestion

ourselves in our efforts to combat segregation, it would be a serious impediment to free speech to limit the right to petition the legislature for redress of grievances—a right specifically protected by the First Amendment in addition to the right of free speech—to the situation where the act of the legislature would not clearly be illegal. The mistake of counsel for the State of Illinois in believing that the Federal Civil Rights Act prohibits segregation shows clearly the repressive effect any such doctrine would have, for under his theory, no one in Illinois dare advocate the passage of segregation laws, though this Court has refused to hold such laws unconstitutional *per se*.

D. The lack of any record to show the existence of the clear and present danger at the time of defendant's offense cannot be remedied by the device of judicial notice.

Mr. Justice Frankfurter upon the oral argument requested counsel for Illinois to submit a memorandum on the state of race relations in Illinois for the past few decades. Counsel for petitioner respectfully points out that while such a memorandum on pre-1917 and 1917 conditions may be helpful in determining whether the legislature could reasonably have found the existence of a clear and present danger, the legislature made no such finding.

In any event we ask the Court to reject the novel doctrine advanced by Illinois that the Court can take judicial notice of the alleged existence of a clear and present danger half way across the continent at the time of petitioner's trial. This Court has stated that it will in free speech cases always scrupulously review the record as to the existence of a clear and present danger. To use the Court's own words, "Where there is doubt as to the intent of the defendants, the nature of their activities, or their power to bring about the evil, this Court will review the convictions with the scrupulous care demanded by our

Constitution." *Dennis* v. *United States*, 341 U. S. 494, 516. It is respectfully submitted that the Court cannot thus scrupulously review a record if there is no record to review, for the courts below did not even themselves take judicial notice of a clear and present danger.

Admitting *arguendo* that the existence of a clear and present danger is a question of law, the decision as to its existence must nonetheless be based in each case upon judgment as to the facts and circumstances surrounding the prescribed utterance. To deprive petitioner of a hearing upon this vital issue would be a violation of due process of law in contravention of the Fourteenth Amendment, for to permit a conviction to stand on a theory of clear and present danger when petitioner had not been notified of such a finding at his trial would be to convict him of an offense he had never been charged with. *De Jonge* v. *Oregon*, 299 U. S. 353; *Cole* v. *Arkansas*, 333 U. S. 196.

A hearing on the issue of clear and present danger below might well have taken into account many factors which the Court could not consider even through the device of judicial notice. For example, it is conceivable that competent psychiatric testimony might have been obtained to show that defendant's diatribe, far from inciting to violence, sublimated any violent tendencies on the part of the receivers of the literature by directing them into channels of petitioning the legislature. The statements which the State of Illinois might now submit to this Court in its memorandum as to the causative factors of riots in Illinois might have been the subject of cross-examination and confrontation of witnesses. To deny this right by the device of the Court taking judicial notice through perusal of the memorandum of the State of Illinois would thus deprive petitioner here of his right to cross-examination and confrontation of witnesses in violation of the Sixth and Fourteenth Amendments to the Constitution. In any event, no clear and present danger

having been found below, this Court cannot now determine the issue *ab initio*.

Judicial notice is, after all, reserved for matters as to which there can be no dispute. Which factors cause race riots is frequently a matter of dispute, as is the very existence of the danger of the riots. To take judicial notice of a hotly controverted question would be to do violence to the concept of due process. The particular evil of the precedent here sought to be avoided is made manifest by putting the shoe on the other foot. Suppose this were a case involving prosecution of a Negro for making defamatory statements against the white race in a Southern state. Were this Court to take judicial notice in the case at bar, it would then be open for the courts of that state to take judicial notice of the existence of a clear and present danger from the utterance of its Negro citizen and to punish him therefor. This Court would doubtless want a record upon which to review that finding. It would be startling indeed were this Court then to reverse a finding by judicial notice of the state court. Judicial notice is not meant for cases of this sort. Judicial notice in this type of case would open the way to judicial tyranny and leave this Court powerless to reverse.

E. Defendant's emphasis upon the seriousness of the situation cannot take the place of a finding of clear and present danger, lacking in this case.

Petitioner's statement that the white population is "seething, nervous and agitated" and that "there have been disastrous incidents within the past year" cannot be substituted for a finding by the Trial Court that a clear and present danger was in existence and that defendant's utterance made the situation even more dangerous. To permit a speaker's statement that the situation is erious—a useful tool of argument—to be substituted for a finding by the Court of clear and present danger

would be to restrict speech by requiring that the speaker never emphasize the seriousness of the situation. Petitioner's diatribe, advanced—whether in good faith or not—as a palliative for a serious situation cannot be held constitutionally prohibited because he thought the situation was serious. In any event, there is nothing in the record whatsoever to indicate *any* danger from the particular publication of defendant's here in question. There is no proof that even one person was swayed by his utterances—either to violence or to petitioning the legislature.

II

Unconstitutional vagueness is not cured merely by framing a statute in terms of a common law meaning.

A. Casting of a statute in common law terms does not cure other vagueness.

In striking down a New York statute, this Court, in *Winters* v. *New York*, 333 U. S. 507, relied on many indicia of vagueness. The statement quoted in respondent's brief from *Winters*, to the effect that the operative clause of the statute has no technical or common law meaning, was but one of the many objections to the statute. The essence of the *Winters* case is to be found in its following language, at pages 509 and 520:

> "It is settled that a statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech is void, on its face, as contrary to the Fourteenth Amendment . . .
>
> "When a statute is so vague as to make criminal an innocent act, a conviction under it cannot be sustained."

That this statute may penalize many innocent acts is apparent from its face. For example, were the Illinois courts to construe the term "creed" as inclusive of political creeds, it might be criminal to state that the Progressive Party is a Communist organization, or that a political party is trying to pack this Court, or that a political party has in its ranks many grafters, bribers, and corrupt persons—and Illinois has conceded on the oral argument that under its theory of constitutional law, such statements could constitutionally be made criminal. It might also be criminal under this statute to report criminal statistics if they demonstrated that one race had a higher percentage of criminals among it than did another. And, finally, the whole common law crime of blasphemy might be revived under this statute—and what that would mean in terms of violations of free speech is graphically illustrated in Schroeder, *Constitutional Free Speech* (1919). In short, "the Illinois statute is too broad to enable convictions * * * to stand." Tanenhaus, *Group Libel*, 35 Cornell Law Quarterly 261, 283 (1950).*

B. But even a common law definition of individual libel becomes vague and indefinite when transferred to the context of group libel.

What constitutes language defamatory of an individual has been in itself a subject of much judicial confusion. (See, *passim*, Ernst and Lindey, "Hold Your Tongue!", 1950.) But even assuming that there is enough judicial certainty to give adequate guide to an individual as to when he is guilty of defamation of an individual,

* For an historical survey of the law of criminal libel, both group and individual, this Court is respectfully referred to the Tanenhaus article and another impartial survey, Riesman, *Democracy and Defamation: Control of Group Libel*, 42 Col. L. Rev. 727 (1942). The authors of this brief feel that there is nothing of value that they can add to these thorough historical surveys.

it is submitted that there is practically no law whatsoever as to when he is defaming a group. It should be noted in this connection that some of the learned members of this Court themselves were not sure whether or not the words in the diatribe here in question were libelous when applied to a race. Aside from the difficulty of determining which words are defamatory, there is the question of whether the words must be defamatory of all the members of the class or whether it is sufficient that it be defamatory of a few of them. Approaching this problem, as it were, *tabula rasa*, it would seem that only defamation of *all* members of the class would be considered libel, since there is hardly a class of any type which does not have within it some members who are truly guilty of the conduct described by the defamatory words. But there is no such clarification from the courts of Illinois.

Debate on the issue would seem to have been foreclosed by the decision in the *Winters* case, which cited favorably (333 U. S. at 516-517) the decision of a New Jersey court in the *Klapprott* case holding void for vagueness a statute also couched in terms of common law libel, terms almost identical with those at issue here. The thrust of the statute in *Winters* was against vulgar magazines. The thrust of the statute at bar is against political and social debate on vital issues. Surely this Court must give such debate the equivalent of the protection it gave to the vulgar magazines.

In *Winters*, as here, the statute did not require any intent or purpose as a condition to a finding of guilt. In *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, a statute in vague terms was construed so as to be rendered constitutional by adding the requirement that the utterance incite to breach of the peace. No such construction was made of the statute here by Illinois.

C. The doctrine of "fighting words" is not applicable to this case.

Where words themselves "tend to incite an immediate breach of the peace" in a face-to-face situation, such "epithets or personal abuse" may of course be constitutionally prohibited. *Chaplinsky* v. *New Hampshire,* 315 U. S. at 572. But publication of literature as here is not a face-to-face situation, nor were epithets or personal abuse involved. And even if epithets and abuse were involved, surely in the context of discussion of social issues, even such abuse must be protected this side of the existence of a clear and present danger. In face-to-face street encounters, personal abuse may well be outlawed; were pamphlets to be restricted whenever abuse of groups was involved, then freedom of speech would be severely limited. The pamphlets of Tom Paine, the satire of Voltaire and Swift, much campaigning of political parties —all would be outlawed were abusive language in publications to be the subject of censorship. As this Court has truly stated, speech may well serve its highest purpose when it stirs people to anger. *Terminiello* v. *Chicago,* 337 U. S. 713.

* * * * * * *

Risk there is, to be sure, in allowing the mouthings of bigots—but no risk, here at any rate, of a clear and present danger of a serious substantive evil. There is always risk in speech, but a risk considered well worth running by our forefathers who wrote the Bill of Rights. It is a risk that must be run if truth and freedom are to prevail.

There is something almost ludicrous in the spectacle of the full majesty of the law swooping down upon the bigot Beauharnais to punish him for his absurd utterances. But whatever the wisdom of such punishment, it is freedom

that is at stake. Yesterday it was the freedom of twenty-five members of Jehovah's witnesses (see Appendix A, p. 15); today it is Beauharnais' freedom; tomorrow it may be the freedom of a Negro to ask for a civil rights program because of the lynchings of the white man. This side of a clear and present danger, the freedom of all must prevail.

Respectfully submitted,

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APPENDIX A

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December 2, 1951

Herbert M. Levy, Esq.
170 Fifth Avenue
New York, N. Y.

Dear Mr. Levy:

This is in response to your telephone request that I supply you with information as to the number of cases that were pending against Jehovah's witnesses under Chapter 38, Section 471, Illinois Criminal Code (Revised Statutes of Illinois), identified by you as the "Group Libel Law of Illinois", at the time that the case of Bevins et al. *v.* Prindable et al., was submitted to the Court.

At that time there were 23 cases at Belleville and 3 cases at Harrisburg pending.

Following the filing of the memorandum opinion by the Court on October 13, 1941, affirming the district court (314 U. S. 573), two test cases were selected for trial. Convictions were entered in the circuit court. Appeals were taken directly to the Illinois Supreme Court because of constitutional questions raised. The Illinois Supreme Court dismissed the prosecutions and held that the door of a private residence, where the offense was committed, did not constitute a public place. As a result, the prosecutors in Belleville and Harrisburg dismissed all the cases. See People of Illinois *v.* Simcox, 379 Ill. 347, 40 N. E. 2d 525.

Sincerely,

HAYDEN C. COVINGTON

HCC:J

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JOSEPH BEAUHARNAIS,

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Respondent.

RESPONDENT'S BRIEF

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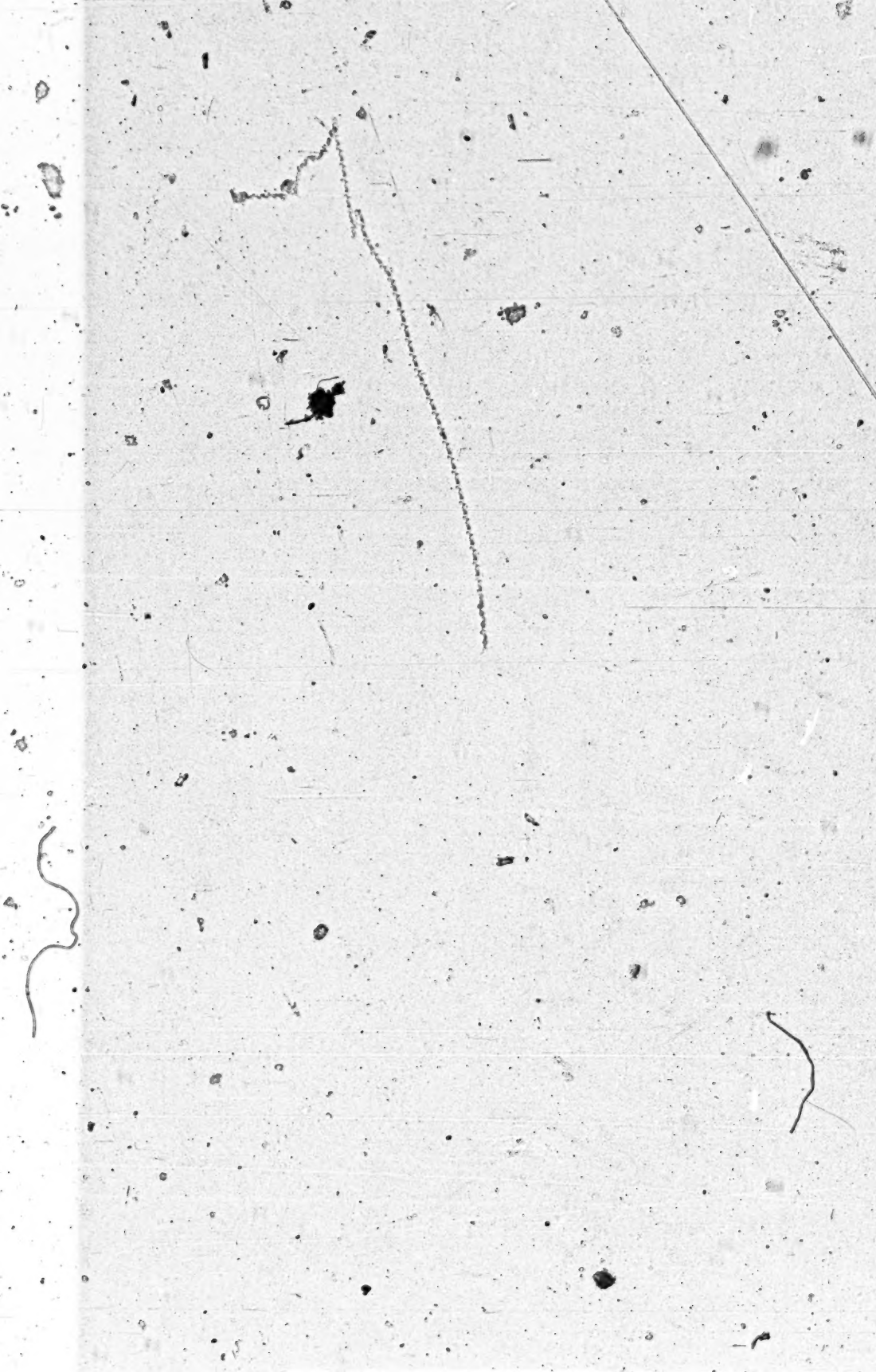
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RESPONDENT'S BRIEF.

The Opinion Below.

The opinion has been reported and is cited as *The People of the State of Illinois,* Appellee v. *Joseph Beauharnais,* Appellant, 408 Ill. 512.

Jurisdiction.

Although petitioner's brief refers to petitioner as appellant and to Illinois as appellee, this cause is here on *certiorari* under Sub. Sec. 3, Sec. 1257, of the Federal Judicial Code and not on appeal.

No question is raised as to this Court's jurisdiction.

The Questions Presented.

The questions presented are:

I.

DOES THE FOURTEENTH AMENDMENT PROTECT THE PRINTED UTTERANCES UPON WHICH PETITIONER WAS CONVICTED?

II.

If this question should be answered "Yes", petitioner's conviction would of course have to be reversed. If this question be answered "No", then there arises the further question:

IF PUBLICATIONS SUCH AS THOSE OF THE PETITIONER ARE NOT PROTECTED BY THE FOURTEENTH AMENDMENT, IS THE ILLINOIS STATUTE IN QUESTION, AS CONSTRUED, LIMITED AND APPLIED BY THE SUPREME COURT OF ILLINOIS, SUFFICIENTLY DEFINITIVE FAIRLY TO APPRISE THOSE SUBJECT TO IT OF THE OFFENSE THAT IS PROHIBITED?

III.

If petitioner's publication is not directly protected by the Fourteenth Amendment and if the State statute under which he has been convicted is not unconstitutional, then petitioner presses questions as to the respective functions *under State law* of judge and jury. We say that these questions, though raised and argued, are not cognizable here.

ARGUMENT.

I.

The Fourteenth Amendment does not protect the printed utterances which were the basis for petitioner's conviction in this case.

Petitioner contends that the Fourteenth Amendment implicitly inhibits, not only previous restraints of, but punitive sanctions applied after the printed publication of libel, provided only that the offender defames a sufficiently large group to invest his utterances with the protective mantle of the Constitution of the United States and

Petitioner says that so precious is the right to "portray depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion" and to expose them to "contempt, derision, or obloquy" that this privilege to defame is immune, not only to injunction at the hands of a single judge or punishment under a general disorderly conduct statute, but to the considered and deliberate enactments of a state legislature which, taking cognizance of inter-racial tensions, discriminations and persecutions, finds clear and present danger of substantive evil in the printed dissemination of such utterances as those published by petitioner and prohibited by the statute here assailed.

What are the "substantive evils" of which the Illinois legislature may reasonably have found "clear and present danger" from such onslaughts upon races as those published by petitioner?

They are:

First, defamation of character is such an evil *per se* as to be subject to civil and criminal sanctions everywhere. Cf. *White* v. *Nicholls*, 44 U. S. 266. Had petitioner libeled particularly named or otherwise specifically identified individuals, no matter how numerous they might be, a statute punishing him would not even suggest a substantial constitutional question. But because petitioner's aspersions were cast upon many persons comprehended in the collective term "Negroes" his counsel perceive an infraction of his constitutional rights in the enforcement of a statute which, not by authorizing previous restraint, but rather by moderate punishment after the defamatory publication, subjects him to a fine for this gigantic libel.

We say that petitioner cannot gain constitutional protection from the consequence of libel by multiplying victims and identifying them by a collective term.

Second, Illinois, like many but not all other States, has so far taken cognizance of racial and religious discrimination as a "substantive evil" as to prohibit such discrimination in hotels, theatres, eating houses, stores, shops and the like. Illinois has enacted a Civil Rights Act which effectively prohibits and punishes discrimination on the basis of race or religion. Illinois Civil Rights Act, Ill. Rev. Stats. 1951, Ch. 38, pars. 125 to 128j, pp. 1342-1343.

Now most certainly printed publications which expose members of minority groups to "contempt, derision or obloquy" tend *directly and immediately* to incite such prejudice as results in the discriminations denounced, prohibited and punished by Illinois' Civil Rights Act. Petitioner and his counsel nowhere dispute the inevitable tendency of utterances such as those of petitioner to encourage violations of the Illinois Civil Rights Act.

Petitioner assumes without arguing that the "substantive evil" of which there must be "clear and present danger" must be the "evil" of an imminently likely eruption of riot, affray or other tumultuous civil disorder. His counsel cite no case, nor do they invoke any premise of logic, that requires the "substantive evil" of which there must be "clear and present danger" to be that of a breach of the peace. If there were such a restriction on the right of a State or the National government's power to regulate speech, then most of the laws against slander, libel, mendacious advertising of securities or other wares and the like would be unconstitutional.

Petitioner's contention that the publication in question is protected by freedom of assembly need not long detain us. The very purpose of the petition was to importune the city council to pervert and prostitute its authority by enacting an ordinance segregating Negroes as to residence. Since such an ordinance, if passed and enforced, would be so clearly unconstitutional as to render its authors and enforcers amenable to prosecution under both the Federal and State Civil Rights Act, this petition amounted to a solicitation to commit a crime. The Constitution has never protected those who solicit particular persons, in this case the city council, to commit a particular offense, in the immediate future, in this case a violation of Federal and State civil rights statutes. Cf. *Schenck* v. *U. S.*, 249 U. S. 47, holding that those who adjure an ordinance to disobey a draft law may be punished.

We submit that we vindicate the present point by the following premises and their conclusion:

> [First premise:] Racial and religious discriminations such as are prohibited by the Illinois Civil Rights Act are a substantive evil which the State may prevent or minimize.

[Second premise:] Publications like those of petitioner directly tend to incite the sort of discrimination that is constitutionally prohibited by the Illinois Civil Rights Act.

[Conclusion:] Petitioner's publications are not protected by the Fourteenth Amendment.

Third, even if the "substantive evil" of which there must be "clear and present danger" has to be an evil manifested by overt physical violence [we earnestly deny this assumption], Illinois' General Assembly could take realistic cognizance that printed incitements to racial and religious hatred are very likely to culminate in riots, murders, lynchings and other orgies of cruelty which it is the *first and greatest duty of government,* upon the performance of which duty rests its ability to discharge all of its other functions, *to prevent.*

A government that cannot effectively prevent riots, lynchings and mass murders is not much of a government. And, we submit, no government need wait until such incendiary publications of those of petitioner have actually ignited the pyres of the lynching bee before moderately chastising the author of such printings as those of petitioner.

Illinois' history of carnage against the Negro is so sorry and so bloody as to be a matter of history and therefore of judicial notice. From the "Springfield riots of 1908", perhaps as ghastly a holocaust of genocide as has ever occurred in the United States, down to the Cicero riots, which, having occurred after [we do not say because of] petitioner's publications, have passed from news into history, the scroll of Illinois' history has been stained with blood spilled from Negroes simply because they were Negroes.

Every riot has its incitement in words. The words may be the hue and cry of "Lynch the nigger." Or they may be

the deliberately calculated appeals to hatred of the monger of race hatred, such as petitioner. But it is by calumny of race that riots are started.

Was there "clear and present danger" that petitioner's publication would incite violence? Petitioner himself, in the very publication that is the basis for this case against him, says that there was imminent danger of an affray. He said in the first paragraph of his diatribe against the Negroes:

> "Whereas, the white population of the City of Chicago, particularly on the South Side of said city, are seething, nervous and agitated because of the constant and continuous invasion, harassment and encroachment by the Negroes upon them, their property and neighborhoods and—
>
> "Whereas, there have been disastrous incidents within the past year, all of which are fraught with grave consequences and great danger to the Peace and Security of the people, * * *".

Nor need judges be purblind as a court to what they all know as men about how totalitarian regimes arise from virulent racism. Even though the evil may be remote in time, if it is so great as to threaten the very fabric and tissue of our form of government by violence, attempts to mobilize revolutionary bands may be punished now. *Dennis* v. *U. S.*, 341 U. S. 495.

Finally, as the Illinois Supreme Court held, the words in question were "fighting words." Cf. *Chaplinsky* v. *New Hampshire*, 315 U. S. 568.

This determination that petitioner's language constituted "fighting words" was eminently reasonable. At least it does not call for reversal by this court.

II.

The Illinois statute is constitutional.

If this court agrees with us that the Fourteenth Amendment does not directly and *ex propio vigore* protect petitioner's obloquy upon the Negro, then the question arises: Is the Illinois statute here assailed so "vague and indefinite" that no person can be punished under it?

To answer this question, we need go no further than the language by which this court itself defined libel at common law. In *White* v. *Nicholls*, 44 U. S. 266, this court, without even the aid of statute, thus formulated the minimal *criterion* for libel:

> "It is enough if the defendant induce a bad opinion to be held of the plaintiff, or make him contemptible or ridiculous."

Now if, without statutory enactment, this court can declare it actionable to make the plaintiff "ridiculous", certainly the legislature of Illinois can make it libelous to hold the victims up to "contempt, derision or obloquy" or, even more specifically, to portray their alleged "depravity, criminality or unchastity."

To be sure, close questions may arise in the administration of this law. They arise under all laws, from the simplest to the most complex. Such terms as, e.g., negligence in the common law or under the Federal Employers' Liability Act, to say nothing of such statutory phrases as "unfair trade" and "combinations in [unreasonable] restraint of trade", precipitate grave questions in particular cases. But statutes containing these words, which, like the words used to denounce group libel in the instant statute, have a well settled common law meaning, are not for that reason unconstitutional.

Winters v. *New York*, 333 U. S. 507, cited and relied upon petitioner, is, to the extent that it is relevant at all, helpful to the State. There the statute, as authoritatively construed by New York's highest court, inhibited publication of compilations of stories of crime "so massed as to become the vehicles for inciting violent and depraved crimes." In striking down this statute, this court observed that "The clause has no technical or common law meaning." But the language of the Illinois statute is nothing but a declaration of the common law of libel and slander, extended to groups.

We submit that Illinois could not have more definitely framed this instant measure, that it couched this act in common law terms, and that it is not so vague or indefinite as to be unconstitutional.

III.

No substantial Federal question as to instructions is presented on this record.

Petitioner contends that the Trial Judge and the Supreme Court of Illinois decided questions of fact.

Even if there were true, it would not, on a record from a State court in a case arising wholly under State law, suggest any Federal question.

Petitioner's counsel forget that in State courts, where only State substantive law is invoked, there is no Federal constitutional right to a trial by jury *at all*. *Bute* v. *Illinois*, 333 U. S. 640. If Illinois might have denied trial by jury altogether in misdemeanor cases, *a fortiori*, she might limit the function of the jury to an ascertainment of what petitioner said and did, leaving the matter of appraising any question of substantive evil to the Court. This would be true even if the question of "substantive evil" were one of

fact; for there is no Federal right to have even questions of fact decided by a jury when the substantive statute is a State statute.

However, as petitioner impliedly recognizes, even if the partition of functions between judge and jury were to be determined in a State court by Federal law, where the Legislature has recognized an evil, the question of whether petitioner's admitted conduct comes within the purview of the statute is one for the court, not the jury. *Dennis* v. *U. S.*, 341 U. S. 495.

In any event, the instructions which petitioner tendered, although copied or adapted from the *reasoning* expressed in this court's opinions, were not rules of law but statements of this court's *rationes decidendi*. They were certainly not applied to petitioner's case. There was no error in refusing to give them.

Conclusion.

For the reasons urged in this brief, the judgment here under review should be affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM (1951)

No. 118

JOSEPH BEAUHARNAIS,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

MEMORANDUM, SUBMITTED IN RESPONSE TO REQUEST OF THE COURT, OF HISTORICAL DATA CONCERNING RACIAL AND LABOR RIOTS AND VIOLENCE IN ILLINOIS.

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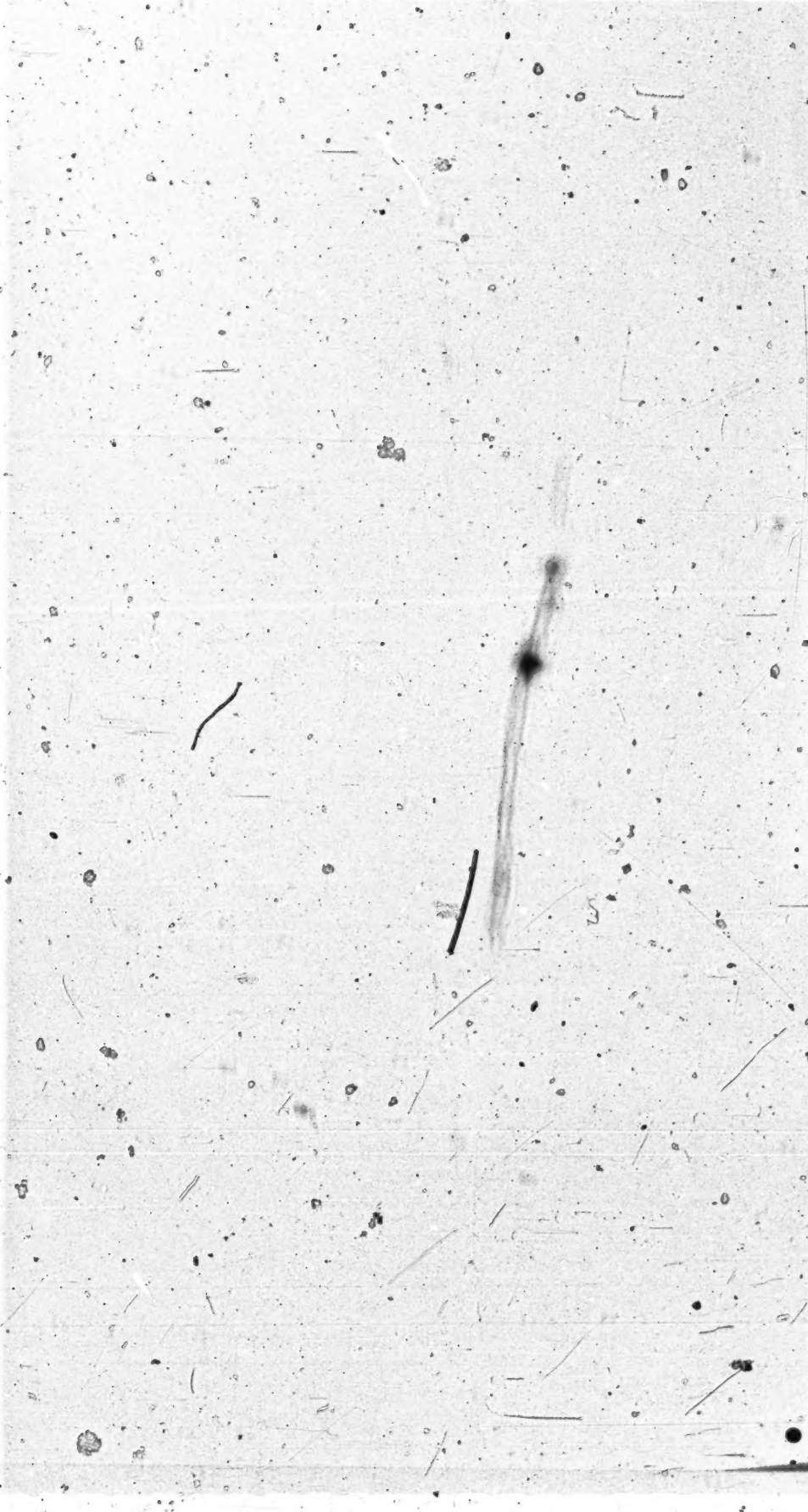
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MEMORANDUM, SUBMITTED IN RESPONSE TO REQUEST OF THE COURT, OF HISTORICAL DATA CONCERNING RACIAL AND LABOR RIOTS AND VIOLENCE IN ILLINOIS.

This memorandum is submitted in response to the request of the Court from the bench, *per* Mr. Justice Frankfurter, for *data* concerning race riots and inter-racial violence in Illinois, as that request was supplemented, *per* Mr. Justice Black, for similar *data* concerning labor riots and violence in Illinois.

The *data* on race riots and violence have been compiled under the auspices of the City of Chicago's Commission on Human Relations, a Commission created by the City of Chicago.

The *data* on labor riots and violence in Illinois have been compiled at the request and under the auspices of that Commission by Bernard Goldstein, University of Chicago Sociologist.

These *data* are printed, without emendation by the Attorney General of Illinois, submitted to the Court and

served upon opposing counsel immediately upon receipt thereof from the above mentioned Commissions.

Every effort has been made to prepare these *data* with all dispatch consistent with the careful research required.

Respectfully submitted,

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RESEARCH MEMORANDUM NO. 5.

Research Memorandum No. 5, "First Annual Report of the Illinois Inter-Racial Commission", printed in 1944:

ILLINOIS RACE RIOTS.

Among the most disturbing homefront problems of the war are the barbarous and riotous racial conflicts which have arisen, from time to time, in various sections of the country. The anti-Mexican "zoot-suit" outbreaks in California made national headlines some months ago. In Boston, anti-Semitic disturbances have been occurring intermittently for some time, and on Chicago's near west side, there has been at least one similar incident. Detroit, New York, Beaumont, Mobile, Alexandria, and other communities have witnessed anti-Negro rioting during the past year.

Fortunately none of these clashes with the possible exception of the one in Detroit, has resulted in consequences comparable to those of our major race riots. Recent disturbances have either been brought quickly under control or citizens response to the incipient clashes was rational enough to recognize the dangers inherent in mob rule. Nevertheless, these difficulties occurring so closely together and spanning the nation are symptomatic of a disease which seems to be growing progressively stronger.

At a period such as this, it seems practical to examine other periods of similar tension so as to isolate, if possible, the characteristics of the disease and to root out and eliminate its causes. Illinois is an excellent experimental laboratory for this purpose. Since 1908 there have been three major riots in this State, sufficiently separated geographically to afford a good opportunity for observation. This memorandum will review each of them.

I.

Springfield, 1908

The race riot in Springfield, Illinois, on August 14 and 15, 1908, presents the spectacle of a peaceful midwestern town thrown headlong into the fury and hysteria of mob-rule without apparent reason and without preliminary development of socially significant race frictions.

On August 15, 1908, the Springfield press carried glaring headlines accompanied by a distorted and inflammatory account concerning the alleged rape of Mrs. Earl Hallam, a young white woman. The local press bears a serious responsibility for having helped to arouse mob feeling by insisting that the so-called crime was "one of the greatest outrages that ever happened in Springfield" and that "no effort should be spared to find the black viper to force appropriate punishment." A partial text of one of the articles which appeared that morning apparently before any arrests had been made, follows:

"One of the greatest outrages that ever happened in Springfield took place at about 11:30 o'clock last night when Mrs. Earl Hallam, 1153 North 5th Street, was dragged from her bed into the yard at the rear of her home and criminally assaulted by an unidentified Negro. The Negro gained access through the kitchen door and went to Mrs. Hallam's room where she was sleeping. . . . She thought it was her husband and she so addressed him. When she saw that it was a Negro, she tried to scream, but the fiend choked her and dragged her from the bed. The Negro then dragged her across the room in which she had been sleeping, up two steps into the kitchen, across the kitchen and out the rear door across the back porch, down the porch steps along a board walk through a gate into a garden at the rear of the house. It was here that he assaulted her. Mrs. Hallam was left lying bruised and unconscious in the garden. . . . Mrs. Hallam sustained besides several bad bruises on her neck and throat, as a result of the relentless clutches of the brute, many cuts and bruises about the body, wounds received when she was dragged through the house and out into the rear yard. . . . Mrs. Hallam was able to give the police a graphic description of the Negro, even telling what kind of clothing he

wore. She states that she is sure that she can identify him if she sees him again. The Negro is described as being rather young and of stout build. He wore working clothes and a colored shirt at the time. . . . There is no doubt that the case is one of premeditated assault. Nothing was taken from the house by the Negro. There was a small jewel box containing several pieces of valuable jewelry and some money was in a drawer in the room occupied by Mrs. Hallam. The assault was one of exceptional brutality and remarkable brazenness. Mr. and Mrs. Hallam are among the best citizens of Springfield and are highly respected and honored as such. That such an outrage should occur in a principal residence district and in one of the best homes of the city is to be greatly deplored. It is bad enough to have such characters to contend with in the slums. A more dastardly act has not been enacted in Springfield for years and no effort should be spared to find the black viper to force appropriate punishment."

Shortly after the appearance of this story, a Negro, George Richardson, who had been working in the neighborhood the day before the attack, was accused of the crime by Mrs. Hallam and arrested when he returned to work the next morning. He was placed in the County Jail and, as soon as it was learned that an arrest had been made of a suspect in the Hallam case, crowds began to gather about the jail. Feeling against Richardson was intensified because of the fact that three or four weeks before, Clergy A. Ballard, a white man, had been murdered by Joe James, a Negro drug and whisky addict. James, who was later tried and hanged for this offense, was in the jail at the same time that Richardson was incarcerated. It is reported that the three or four hundred persons who had gathered "seem good-natured rather than bloodthirsty." No effort was made to disperse the mob, but at about five o'clock both Richardson and James were secretly taken from the jail and transported by automobile to Sherman, Illinois, some miles north of Springfield, and thence by train, to Bloomington.

In the meantime the local press published a picture of George Richardson carrying the following caption:

"Negro arrested—Suspected of making assault on Mrs. Hallam and whom Mrs. Hallam says she believes is the

guilty man. Richardson protests his innocence and claims he can prove an alibi. He has a bad record."

Immediately below was a picture of Mrs. Hallam with the following observation:

"Victim of Negro fiend. The above cut was made from a photo of Mrs. Hallam taken three years ago when she graduated from the Springfield High School. Her maiden name was Miss Mabel Trees, daughter of George Trees, a well-known farmer residing on a farm near Sherman, Illinois."

Despite the fact that the Lowden report subsequently stated that "Richardson had no criminal record" and that "he (Richardson) and two of his family were property owners in Springfield," the local press carried the following:

"Richardson has a long and checkered career. Though only thirty-six years of age, he has twice been an inmate of the penitentiary at Chester. On one of these charges, he served two years in the penitentiary at Chester, having been convicted of the charge of killing John Gowdy in Bill Johnson's saloon on East Washington Street about five years ago, and the other term was served for carving up a man with whom he had engaged in a quarrel. For a brief time, he also conducted a saloon on East Washington Street, between 6th and 7th Streets."

In the early evening, the mob began to demand that the sheriff produce the two Negroes. When they were finally convinced that Richardson and James were not in the jail, they began to storm toward the restaurant of Harry Loper who, it was rumored, had provided the automobile in which the two men had been removed. The restaurant was five blocks away. At about 8:30, after the mob has insistently called for Loper to emerge from his restaurant, someone threw a brick through the window and, in a few moments, the front of the restaurant had been completely smashed. In the rioting and shooting which occurred at this point, Louis Johnson, of 1208 East Reynolds Street, was shot and killed. His body was found at the foot of the stairs leading to the barroom in Loper's restaurant.

The Lowden Commission's report then describes the mob's activities as follows:

"When the mob began to surge through the town, the Fire Department was called to disperse it, but the mob cut the hose. Control having been lost by the sheriff and police, Governor Deneen called out the militia. The mob, by this time very much excited, started for the Negro district through Washington Street, along which a large number of Negroes lived on upper floors. Raiding second-hand stores which belonged to white men, the mob secured guns, axes, and other weapons with which it destroyed places of business operated by Negroes and drove out all of the Negro residents from Washington Street. Then it turned north into Ninth Street."

Roy Young, 22 years old, later arrested for participating in the riot, described this occasion as follows:

"When the crowd commenced gathering in front of the County jail after the Negroes, I went over. When the Negroes commenced shooting on East Washington Street, some of us broke into Fishman's Pawn Shop to get some guns. I took three or four revolvers and some cartridges and some of the other fellows got some guns, too.

"We went east on Washington Street and, when the fighting got bad, I commenced shooting at Negroes. I shot at every one at whom I got a chance. I guess I hit some of them, but I don't know. They tried to kill me just the same. When we went over on Madison Street, someone started setting fire to the houses of Negroes and I helped. I guess I poured oil on about fifteen or sixteen houses and set fire to them. . . . When we got to Ninth and Madison Streets, I was just setting fire to a house when a white man ran up to me and told me not to burn the place—that it belonged to him and was just rented to Negroes. We didn't burn this house."

At the northeast corner of Ninth and Jefferson Streets, the mob set fire to the building of Scott Burton, a Negro, and lynched Burton. They found him in the yard in back of his shop, tied a rope around his neck, and dragged him through the streets. The mob burned and mutilated the body, and then hung him to a tree. After riddling Burton with bullets, the crowd was dispersed by a company of militia which arrived from Decatur, Illinois. It was necessary to shoot into the crowd before they gave way. At least two of the men in the mob were wounded.

The following garbled version of the lynching is the account of a contemporary newspaper:

"After burning many houses, the remnant of the mob, which became more and more desperate as the night passed, finally gratified its thirst for blood this morning at three o'clock when an unknown Negro was lynched at the corner of 12th and Madison Streets (sic) right in the heart of the so-called 'bad lands.'

"It is reported the name of the Negro lynched is Charles Hunter.

"Troops arrived at the scene too late to prevent the lynching.

"Some of the members of the mob declared that the Negro lynched had shot two white men. They said that, in a fight with the whites, the Negro was forced into a corner at the saloon and grocery at the corner of 12th and Madison Streets. When retreat was cut off, the Negro is said to have opened fire, wounding two.

"Then came the cry 'Get the rope!'

"All the members of the mob eagerly took up the cry. The Negro was caught and dragged to the street. Here he was beaten and then a rope was swung around his neck and the other end of the rope thrown over the limb of a tree right in front of the store. With a cry of satisfaction, the Negro was sung high off the ground. He was dead in a few minutes. Many shots were fired at the body. Just then the troops arrived. . . . During the fight that followed, two men were shot by the troops: Mike Lucey, shot in leg; and Charles Wolf, 913 North Klein, shot in leg."

On the same day, the following inflammatory editorial appeared in the local press:

"Words are inadequate to express the brutal and hellish character of the outrage of which Mrs. Earl Hallam was the victim Thursday night. This lady was dragged from her bed where she had been sleeping, choked and bruised, and taken to the yard of the residence and assaulted by a Negro fiend. This devilish deed was not committed in the suburbs or in a disreputable neighborhood, but in a highly respectable portion of the city and in a moderately thickly settled neighborhood. It must have been premeditated and was in all its harrowing details so brutal as to arouse a

feeling of riotous indignation among the people of the city. That such an atrocious act could be committed in Springfield alarmed those who have wives and daughters who are unprotected in their homes at night to the possible danger of a similar attack; for if Mrs. Hallam could be made the victim of a brutal assault, what is there to prevent others from becoming victims of like outrages?

"Is there any way to relieve the community of this fear? That is the question in connection with this horrible crime for our people to consider. The prompt punishment with the extreme penalty of the law of those who commit or attempt to commit such crimes would doubtless insure greater safety. But to this should be added the exercise of the power and authority vested in the city administration to expel from the city the scores of worthless and lawless Negroes who come here, if not to commit crimes themselves, to 'egg on' others of their race to do so. The disreputable dives where this class congregates should be suppressed and kept closed and the police should be instructed to compel the vagrants and lawless to leave the city.

"The universal spirit of profuse sorrow and sympathy for the unfortunate victim and her family is accompanied by the desire to see the brutal perpetrator of the deed brought to speedy and summary justice."[*]

On the morning of August 16, the mob reassembled in the Court House Square and marched south on Fifth Street to Monroe, west on Monroe to Spring, and south on Spring to Edwards. There they lynched W. K. Donnigan, 84 years old, who owed the half block of ground where he lived. According to the Lowden Report, he was found sleeping in his own yard and was quickly strung up to a tree across the street. His throat was then cut and his body mutilated. Contemporary accounts insist that, as the mob approached Donnigan's home, he fired a revolver to hold back the crowd. The mob became incensed and applied a firebrand to his house. "It is understood," according to one gruesome account "that Donnigan's throat was cut before the rope was tied about his neck. Strange to say, when the body was cut down by the police, the victim was still breathing faintly." No reason was given for the lynching except that

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[*] Emphasis supplied.

Donnigan had been married to a white woman for more than thirty years.

As the rioting died down, a feeling of community guilt began to pervade the town. An arrest was made of one of the lynchers, and it is interesting to note that the inevitable search for a culprit fastened itself upon a member of another minority group. The following headline and story appeared in the local press:

"ARREST ST. LOUIS JEW AS THE RINGLEADER —Soon after the injured man was taken to the station, A. Raymer, a young Hebrew, twenty years of age, of St. Louis, was arrested by Detective Jones. It is said that Raymer made an attempt to drag Jones from a street car on which a part of the mob rode and when a suitable point was reached, Detective Jones took Raymer in custody and, with assistance, took him to the county jail. After considerable trouble during which Raymer was beaten by the police until he begged for mercy, he was forced to give the names of several others thought to be implicated in the riot Monday. Raymer was forced to divulge the information behind closed doors, but the blows given him and his screams for mercy, as well as the officers' threats to kill him if he didn't tell more, could be plainly heard from without. He finally gave the authorities several names of men whom he said were with him at the time of the lynching. *Raymer is said to be a character from St. Louis.*" (Emphasis supplied.)

The local press also published an incongruous justification of its role in agitating community feeling. On August 16, the following box carefully centered so as to attract attention, appeared in one of the local papers:

"It is unnecessary for the (a local newspaper) to call attention to the complete and perfect manner in which it told the story in detail and with accuracy from every point (sic) of the scenes and incidents occurring in connection with the work of the mob in burning the homes of the colored people in the east end of the city, the demolishing of store fronts, and the destruction of property which ended in the lynching of Scott Burton. The paper told the story completely and every detail was covered. Not only in a news feature did it excel but in its exclusive presentation of the pictures of the principals in the outrage which

led to mob rule in Springfield—Mrs. Earl Hallam and the Negro suspect, George Richardson. From a mechanical standpoint, the edition was perfect, the headlines and the stories, being arranged in such a manner as to enable the reader to grasp, without any trouble, all the details in connection thereto.

"From a news standpoint, containing as it did nothing but news, covering beside the local happenings, all the principal news of the world—the edition of 25,000 copies issued solely for the use of paid subscribers and for street sales—has never been equaled in this city."

By Sunday evening, August 16, the town was quiet. No effort was made to reorganize the mob. The whole city was as if under martial law; the saloons were shut and every place of business was closed at nine o'clock.

During a subsequent inquiry by a special Grand Jury, many tragi-comic elements emerged. Certain disreputable facts were disclosed concerning Mrs. Hallam's character; and she admitted that, although she had been brutally beaten by a white man on the night indicated, Richardson was not present and had no connection with the affair. She signed an affidavit exonerating him, admitting that she had not been raped and that, for reasons which she did not desire to divulge, she was keeping the name of the real assailant a secret. In the light of her observations before the Grand Jury that she "would be the last person in the world to accuse any person—black or white—of such an inhuman act," the attitude of the press and the unreasoned violence of the mob becomes particularly disturbing because of its utter irresponsibility.

During the course of the riot, two Negroes were lynched —Scott Burton and W. K. Donnigan—and four white men were killed. They were Louis Johnson; John Colwell, 1517 Matheney Street; J. W. Scott, 125 E. Adams Street; and Frank Delmore, who was killed by a stray bullet. Seventy-nine persons were injured. Among the typical injuries sustained were those to Albert Byerline, 911 So. First Street, shot in hip by stray bullet at Eighth and Washington Streets; Ed Brinkman, struck on head with brick; Ronald Sturges, artery cut in left forearm; John Broderick, shot in groin; William Smith, colored, "tied to telegraph pole and face beaten to jelly"; and Phil Pollack, of Chicago,

whose hands were badly lacerated while assisting Mayor Reece in escaping from the mob at Looper's. Property destroyed amounted to over a hundred thousand dollars and included an entire block of houses between Tenth and Eleventh Streets, which were burned with all their contents, a number of saloons, a barber shop, and a restaurant. At least 78 indictments were returned, but no record of convictions has been uncovered.

II.

East St. Louis, 1917

Rioting in East St. Louis began the night of May 28, 1917, when it was rumored, although never verified, that two white men were held up by a Negro. Mob violence started shortly after a mass meeting held by city officials at which the problem of the Negro influx into East St. Louis had been discussed. It is estimated that from 10,000 to 12,000 Negroes had come to East St. Louis from the South during the winter of 1916-17 and that during the year and a half preceding the riot, the number of such migrants was close to 18,000. The reasons for the Negro migration were the usual ones: industrial prosperity due to the first World War, inducements held out to Negroes by Northern employers, particularly meat packers, and the desire of many Negroes to break their ties with feudal South. The immediate effect of the increase in the colored population of East St. Louis was an acute housing shortage. There was also a tendency on the part of many employers to keep the wage level down because of the satisfactory labor supply—a fact which resulted in smoldering resentment on the part of many labor unions.

At the meeting of May 28, 1917, Mayor Mollman announced that he would do everything he could to induce employers to stop recruiting from among the Negroes in the south and shipping them in. Addresses were made by several labor leaders and the Mayor promised to take the matter up officially. Immediately after the adjournment of the meeting, the City Council met, with the Mayor presiding. They had hardly started when the noise of the rioting reached the Council Chamber and the Council adjourned in an effort to stem the trouble.

During this period, which constituted the preliminary phase to serious rioting which occurred later, several Negroes' homes were fired by the mob, and during the four days following, approximately twelve white men and forty Negroes were injured. An effort was made to get troops to East St. Louis, but it was not until the second day of the rioting that the troops arrived. Orders were issued promptly by Mayor Mollman to close all saloons, and, in some of the districts affected, moving picture houses.

The following account of the riot appeared in the May 29 issue of the St. Louis Globe Democrat: "A mob, estimated at 3,000 persons determined, as they fought, to rid the city of Negroes imported to work in factories and ammunition plants, swept through the streets last night and early this morning, attacking and beating Negroes wherever found. Several Negroes have been injured so severely that they will probably die.

"The mob stopped street cars and inter-urban cars in its search and, at one o'clock, was threatening to storm the jail where at least a score of Negroes had been taken for keeping. Ambulances made the rounds of the streets where the mobs had traveled to pick up unconscious and injured blacks and take them to hospitals and temporary shelters.

"There were pitful scenes in the Negro section; signs of old Negro men and women, pleading with leaders of the mob to spare their lives, homes, and possessions, were common. The screaming of children, sobs of women, and curses of the Negro men could be plainly heard above the din of derision raised by those composing the mob.

"All pleas were met with the same answer: 'Leave town!' The mob was not imbued with the spirit of brutality or ruthlessness. It was rather the spirit of a people exasperated to a degree of determination that could not be checked."

The rioting started afresh on Sunday and futher violence occurred during which three white men and three Negroes were reported wounded. On the following day, one Negro was shot and two others were beaten.

For a month, East St. Louis sat on a keg of dynamite. No outbreaks occurred, but resentments were seething below a none too placid surface. On the night of July 1, 1917, an unidentified automobile (some witnesses said two) went

through the Negro section of the city, its occupants firing promiscuously into homes. This wanton action aroused fierce resentment among the Negroes who organized for their defense and armed themselves with guns. According to the Lowden report, "The ringing of a church bell . . . drew a crowd of them, and they marched through the streets ready to avenge the attack. A second automobile filled with white men crossed their path. The Negroes cursed them, commanded them to drive on, and fired a volley into the machine. The occupants, however, were not rioters but policemen and reporters. One policeman was killed and one was so seriously wounded that he died later."

This was the spark that set off the bloodiest holocaust in the history of East St. Louis. On the second of July, more than 100 Negroes were shot or burned to death, 60 homes of Negroes in the East St. Louis Black Valley were wiped out, and other property damage of about $400,000 was sustained. According to State's Attorney Schaumloeffel of St. Clair County, a total of 250 were killed in the rioting that night. The first white man killed in the night's rioting was Tom Moore, of Granite City. He was standing beside a soldier when a bullet, believed to have been from a Negro sniper's gun, struck him in the body. He was instantly killed. One Negro was found hanging from a telegraph pole on Broadway near the scene of the fiercest rioting. Twenty-five bodies of Negroes were counted lying along South Broadway between Fourth and Sixth Streets. From morning until night, mobs made up largely of idle men and half-grown boys ran after Negroes that appeared on the street. As soon as a Negro was sighted, there would be a chorus of "Go get him," and if the man was caught, he was badly beaten with clubs and, in several cases, shot. Some of the beaten and wounded were sent to St. Mary's Hospital and the Deaconess Hospital, but the number hospitalized represented only a small percentage of those that were handled by the mob. Women and children were not spared. An instance was given of a Negro child two years old who was shot down and thrown into a doorway of a burning building.

A contemporary eye-witness account reveals mob excesses which stagger the imagination. Part of this description follows:

"For an hour and a half last evening I saw the massacre of helpless Negroes at Broadway and Fourth Street in downtown E. St. Louis, where a black skin was a death warrant.

"I have read of St. Bartholomew's Night, I have heard stories of the latter day crimes of the Turks in Armenia, and I have learned to loathe the German army for its barbarity in Belgium, but I do not believe that Moslem fanaticism or Prussian frightfulness could perpetrate murder of more deliberate brutality than those which I saw committed in daylight by citizens of the State of Abraham Lincoln.

"I saw man after man, with hands raised, pleading for his life, surrounded by groups of men—men who had never seen him before and knew nothing of him except that he was black—and saw them administer the historic sentence of intolerance, death by stoning.

"I saw one of these men, almost dead from a savage shower of stones, hanged with a clothesline, and when it broke, hanged with a rope which held. Within a few paces of the pole from which he was suspended, four other Negroes lay dead or dying, another having been removed dead a short time before.

"I saw one of these men, covered with blood and half-conscious raise himself on his elbow and look feebly about, when a young man, standing directly behind him lifted a flat stone in both hands and hurled it upon his neck. This young man was much better dressed than most of the others. He walked away unmolested. . . .

"And now women began to appear. One frightened black girl, probably twenty years old, got as far as Broadway with no worse treatment than jeers and threats. At Broadway, in view of the militiamen, the white women, several of whom had been watching the massacre of the Negro men, pounced on the Negress. I do not wish to be understood as saying that these women were representative of the womanhood of East St. Louis. Their faces showed all too plainly exactly who and what they were. But they were the heroines of the moment with that gathering of men, and when one man, sick of the brutality he had seen, seized one of the women by the arm to stop an impending blow, he was whirled away, with fists under his nose, and with more

show of actual anger than had been bestowed on any of the Negroes.

"'Let the girls have her' was the shout as the women attacked the young Negress. The victim's cry, 'Please, please, I ain't done nothin',' was stopped by a blow in the mouth with a broomstick which one of the women swung like a baseball bat. Another woman seized the Negress' hands and the blow was repeated as she struggled helpless. Finger nails clawed her hair and the sleeves were torn from her waist when some of the men called 'Now let her see how fast she can run!' The women did not readily leave off beating her, but they stopped short of murder and the crying hysterical girl ran down the street.

"A Negro, his head laid open by a great stone cut, had been dragged to the end of the alley on Fourth Street and a small rope was being put about his neck. There was joking comment on the weakness of the rope and everyone was prepared for what happened when it was pulled over a projecting cable box a short distance up the pole. It broke, letting the Negro tumble back on his knees and causing one of the men who was pulling on it to sprawl on the pavement. . . . A rope obviously strong enough for its purpose was (then) brought. Right here I saw the most sickening incident of the evening. To put it around the Negroes' neck, one of the lynchers stuck his fingers inside the gaping scalp and lifted the Negro's head by it, literally bathing his hand in the man's bood. 'Get hold and pull for East St. Louis,' called a man with a black coat and a new straw hat, as he seized the other end of the rope. The rope was long, but not too long for the number of hands that grasped it, and this time the Negro was lifted to a height of about seven feet from the ground. The body was left hanging there."

By the evening of July 2, the fury of the mob had spent itself and the riot subsided. At that time there were seventeen officers and 270 men on duty and, by July 4, the force had increased to thirty-seven officers and 1411 men comprising some five companies of militia. A Congressional Committee, which later investigated the riots, condemned the conduct of the militia and the political administration of the town. In the estimation of the Committee, the troops were poorly officered and, in only a few cases, did their

duty. The report states that, "They seemed moved by the same spirit of indifference or cowardice that marked the conduct of the police force. As a rule they fraternized with the mob, joked with them and made no serious effort to restrain them." Of Colonel S. O. Tripp, the Commanding Officer, it is said that "he was ignorant of his duties, blind to his responsibilities and deaf to every intelligent appeal that was made to him." Many instances were given where members of the militia actively participated in the depredations of the mob and encouraged it in its murders, arson, and general destruction. The behavior of the troops, according to the Lowden report, was condemned not only by the Congressional Committee but by citizens generally, and a special inquiry was made into their conduct by the Military and Naval Department of the State of Illinois. The Commanding Officer, though severely censured by the Congressional Committee, was exonerated by this inquiry.

The Congressional Committee uncovered an almost unbelievable combination of "shameless corruption, tolerance of vice and crime, maladministration, and debauchery of the Courts." The Lowden Committee, quoting the report of the Congressional Investigation Committee, states, "The report says that East St. Louis for many years was a black spot, harboring within its borders 'every offense in the calendar of crime' and committing openly 'every lapse in morals and public decency.' Politicians looted its treasury, gave away valuable franchises, and elected plunderers to high office. Graft, collusion with crime and vice, and desecration of office were openly and deliberately practiced. Criminals were attracted and welcomed, and the good people of the community were powerless. . . . The Mayor . . . was a tool of dishonest politicians, the electorate was 'debauched,' the police were a conscienceless bunch of grafters and the revenue of the city was largely derived from saloons and dens of vice."

Press treatment of the East St. Louis riot, as contrasted with that of the Springfield, Illinois, riot of 1908, was exceptionally temperate.

III.

Chicago, 1919

Between July 27 and August 2, 1919, thirty-eight persons were killed, 537 injured, and about 1000 rendered homeless and destitute as a result of a race riot which broke out in Chicago on Sunday afternoon and swept intermittently through the south and west sides of the city for four days. The riot was brought under control around August 2, and on August 8 the State Militia was withdrawn.

The Lowden Commission has written a detailed account of the riot and it is strongly recommended that the Lowden Report be thoroughly examined by the Inter-racial Commission. It is contained in a volume published by the University of Chicago Press, in 1922, entitled "The Negro in Chicago—A Study of Race Relations and a Race Riot," by the Chicago Commission on Race Relations. It has been reprinted by the Cambridge University Press of London; the Maruzen-Kabuskiki-Kaisha, of Tokyo, Osaka, Kyoto, Fukoka, and Sendai; and by the Mission Book Company of Shanghai.

Background of the Chicago Riot

Between 1910 and 1920, the Negro population in Chicago increased from 44,103 to 109,594, or over 148%. Most of the increase was between 1916-19 and was principally caused by the widening industrial opportunities for southern colored workers occasioned by the outbreak of the war. While this influx did not result in industrial disturbances of any serious character, as it did in East St. Louis, considerable friction developed with respect to housing. There had been practically no building construction in the city because of the material shortages occasioned by the war, and it was a physical impossibility for the increased Negro population to live in the space occupied in 1915. The expansion of Negroes into adjoining communities resulted in a development of a tense and highly inflammable situation. Feeling ran so strong that, in "invaded" neighborhoods, bombs were thrown at the houses of Negroes who had moved in and at the houses and offices of real estate men,

white and colored, who had rented to the Negroes. During the twenty-seven days preceding the riot, twenty-four such bombs had been thrown. The police made no arrests and, according to the Lowden Report, "were accused of making little effort to do so." On several occasions before the riot, there had been intermittent racial clashes and on these occasions, several hundred extra policemen were sent into the territory where trouble seemed imminent.

On the night of June 21, 1919, five weeks before the riot, two Negroes were murdered by a gang of young hoodlums, and on each occasion, the victim was alone and the violence was unprovoked. Molestation of Negroes by hoodlums had been prevalent in the vicinity of parks and playgrounds and at bathing beaches, but serious trouble did not occur until the clash at the 29th Street beach on Sunday afternoon, July 27.

It is suggested that another element which aggravated the situation was the affiliation of Negro politicians with Mayor Thompson's faction of the Republican Party. Negro aldermen, elected from the wards involved in the riot, were prominent in the activities of this faction and, in one of the leading colored wards, succeeded in giving Mayor Thompson in the Republican Primary Election on February 5, 1919, 12,143 votes, while his two opponents, Wilson and Merriam, received only 1492 and 319, respectively. Mayor Thompson was re-elected on April 1, 1919, by a plurality of 21,622 and a total city vote of 698,920. His vote in the same ward was 15,569 to his nearest opponent's 3323 and was, therefore, almost large enough to control the election. The bitterness of this factional struggle aroused resentment against the race that had so conspicuously allied itself with the Thompson side.

Outbreak of the Riot

The beach at 29th Street was not publicly maintained and supervised for bathing, but it was very populated during the hot summer months. It flanked an area thickly settled by Negroes, and it was approached over railroad tracks close to the Lake shore. The 27th Street portion of the beach, by mutual understanding, was considered as reserved for Negroes, while the 29th Street area was used by whites.

At four o'clock Sunday afternoon, Eugene Williams, 17-year-old Negro boy, was swimming in the water at the foot of 29th Street. He had entered the water near the 27th Street district, but had swum or drifted to the part used by the whites. The Lowden Report describes the succeeding events as follows:

"Immediately before (Williams') appearance (at the beach), white men, women, and children had been bathing in the vicinity and were on the beach in considerable numbers. Four Negroes walked through the group and into the water. White men summarily ordered them off. The Negroes left, and the white people resumed their sport. But it was not long before the Negroes were back, coming from the north with others of their race. Then began a series of attacks and retreats, counterattacks, and stone-throwing. Women and children who could not escape hid behind debris and rocks. The stone-throwing continued, first one side gaining the advantage, then the other.

"Williams, who had remained in the water during the fracas, found a railroad tie and clung to it, stones meanwhile frequently striking the water near him. A white boy of about the same age swam toward him. As the white boy neared, Williams let go of the tie, took a few strokes and went down. The coroner's jury rendered a verdict that he had drowned because fear of stone-throwing kept him from shore. His body showed no stone bruises, but rumor had it that he had actually been hit by one of the stones and drowned as a result.

"On shore guilt was immediately placed upon a certain white man by several Negro witnesses who demanded that he be arrested by a white policeman who was on the spot. No arrest was made.

"The tragedy was sensed by the battling crowd and, awed by it, they gathered on the beach. For an hour both whites and Negroes dived for the boy without results. Awe gave way to excited whispers. 'They' said he was stoned to death. The report circulated through the crowd that the police officer had refused to arrest the murderer. The Negroes in the crowd began to mass dangerously. At this crucial point the accused policeman arrested a Negro on a white man's complaint. Negroes mobbed the white officer, and the riot was under way."

Two hours elapsed after the drowning of Williams before any further fatalities occurred. Reports of the incident at the beach spread out into the neighborhood, and Negroes gathered at the foot of 29th Street. The crowd became more excited and one of them, James Crawford, fired into a group of officers and was himself shot and killed by a Negro policeman who had been sent to help restore order.

Rioting started in several sections of the city and continued throughout the night all over the south side. Negroes who were found in street cars were dragged to the street and beaten. They were first ordered to the street by white men and, if they refused, the trolley was jerked off the wires. The Chicago Tribune of July 28 reports that "scores of conflicts between whites and blacks were reported at south side stations, and reserves were ordered to stand guard on all street corners. Some of the fighting took place four miles from the scene of the afternoon riots."

As white gangsters, farther to the west, became active, Negroes in white districts suffered severely at their hands. From 9 p.m. until 3 a.m., twenty-seven Negroes were beaten, seven were stabbed, and four were shot.

The city was relatively quiet during Monday morning and afternoon. As evening approached, however, white men and boys, living between the Stock Yards and the "black belt," sought malicious amusement directing mob violence against Negro workers returning home.

Street car routes, especially transfer points, were thronged with white people of all ages. Trolleys were pulled from wires and the cars brought under the control of mob leaders. Colored passengers were dragged into the street, beaten, kicked, and shot. Four Negro men and one white assailant were killed and thirty Negro men were severely beaten in the street car clashes.

It is not known whether there was any relationship between the use of violence at street car points and the impending street car strike, but it is fair to assume that many Negroes paid for the agitation which had been built up for some time against the street car company. Street car clashes ended at midnight Monday by reason of a general strike on the surface and elevated lines. The tie-up was complete for the remainder of the week. All of Chicago walked to work the next day, and this became a new source

of terror for many Negroes, some of whom were killed en route to their work through hostile territory. A white gang of soldiers and sailors in uniforms, augmented by civilians, raided the Loop early Tuesday, killing two Negroes and robbing and beating several others.

The Daily News, in a special bulletin published on the front page of its July 28 issue, stated: "Three hundred Negroes were reported at a late hour this afternoon to have congregated at State and 35th Streets. Many of them are armed." On the following day, it reported a revolt of 150 Negro prisoners in the County jail on Dearborn Street near Austin Avenue: "The rebellious Negroes were finally quelled by a force of 200 policemen, guards, deputies, and detectives who, swinging clubs and blackjacks, rounded up the prisoners . . . and finally induced them to go into their cells." One Negro and six white persons were reported injured.

On Wednesday night and Thursday, rainfall drove idle people of both races into their homes. The temperature fell, and with it, the white heat of the riot. From this time forward the riot was well under control, although, on Saturday, incendiary fires burned forty-nine houses in the neighborhood west of the Stock Yards. Nine hundred forty-eight people, mostly immigrant Lithuanians, were made homeless and property loss was fixed at $250,000.

An interesting commentary on the Chicago Riot was that it broke out at a time when the entire city was perturbed by two other situations. One was the confession of a murderer, Thomas Richard Fitzgerald, who confessed to killing Janet Wilkinson, a grade-school girl, and received more attention in the press during the first two days of the riot than did the riot itself. The second was the threatened streetcar strike which eventually erupted during the progress of the riot. It is instructive to reflect, twenty-four years later, on the character of the journalism which was unable to determine for four or five days which of these three events was of the greatest significance.

Analysis

This report has not attempted to discuss a variety of lesser outbreaks which occurred incidental to the Chicago and East St. Louis riots nor to discuss other racial disturb-

ances which occurred in Washington, Omaha, and in the rural districts of Arkansas at approximately the same time as the riot in Chicago.

The running story of the three major Illinois riots reveals that in no two instances were the immediate causes of racial strife more than superficially similar. The riot in Springfield was totally inexcusable. The riots in Chicago and East St. Louis, while they can under no circumstances be condoned, are at least traceable to understandable social phenomena.

The Springfield riot can be attributed to three primary reasons: (1) Irresponsible incitement to riot by the press and by the hoodlum element of the town; (2) boredom on the part of the inhabitants and an irresistable urge to create an emotionally exciting situation; and (3) racial intolerance.

In East St. Louis, the basic reasons for the riot were: (1) intolerable housing conditions for white workers, resulting from the influx of Negroes from the South; (2) Union resentment against Negroes for allegedly acting as strike-breakers and for increasing the labor force, thus lowering the bargaining power of white workers; (3) encouragement and incitement to riot by the troops and police who were supposed to maintain order; (4) war hysteria which created a psychological atmosphere favorable to murder and brutality; (5) local political corruption; and (6) racial intolerance.

The causes of the Chicago riots were: (1) housing frictions, resulting when Negroes attempted to expand outside the boundaries of the so-called "black belt"; (2) recreational difficulties, particularly with respect to use of beaches; (3) a spilling-over into the postwar period of the war hysteria which had been abruptly ended by the Armistice of November 11, 1918; (4) political resentment against Negroes for having swung the recent mayoral campaign in favor of Mayor Thompson; (5) police inefficiency and favoritism; and (6) racial intolerance.

This summary of basic causes is not encouraging because a number of the factors present during the East St. Louis and Chicago riots are present today. Racial intolerance is one factor which has remained constant; housing difficulties are becoming daily more aggravated; and the war may be

expected to create the type of receptiveness to mob hysteria which may easily flare into open violence. This conclusion is supported by the fact that in many areas such outbreaks have already occurred; and the fact that there have been no recent recurrences of race difficulties, rather than being an encouraging sign, simply follows the patterns we have already uncovered in previous riots. The tendency seems to be for sporadic outbreaks to be followed by periods of quiet and then succeeded by periods of further aggression.

This memorandum simply presents a factual survey of conditions prevailing during previous riots. No recommendations are being included because it is strongly felt that recommendations on this subject should emanate from the full Commission. However, attention is respectfully directed to the recommendations incorporated in Research Memorandum No. 1, "Specific Methods for Promoting Good Will Among Racial Groups in Illinois."

OUTLINE OF RACE RIOTS AND INTER-RACIAL VIOLENCE IN CHICAGO.

Outline of Race Riots

The continuing growth of Chicago's Negro population during and since World War II has been marked by a heightening of racial tensions which have upon frequent occasion erupted into violence. These disturbances have occurred principally around housing situations. The pressure for more adequate living accommodations from the Negro community which saw a ten-year increase of upward of 40% from a 1940 figure of 270,000 to 450,000 coupled with ever-growing economic ability to purchase and maintain property by more and more Negroes was met by resistance in many adjacent white communities. Agitation and organization in these communities to maintain the existing pattern of segregation focused the fears of resident property owners and resulted inevitably in the outbreak of violence of both the hit-and-run sneak attack variety and the even more volatile crowd and mob demonstrations.

The following table records hit-and-run attacks occurring in Chicago surrounding the movement (either actual,

potential or rumored) of non-white families into these communities:

	1948	1949	1950	1951
Bombings	2	0	0	2
Arson	15	8	11	4
Attempted Arson	15	8	3	3
Stonings	35	24	18	22
Malicious Mischief	11	16	9	11
Total attacks against property	78	56	41	42

In those areas of the city where resistance has been extremely high (such as in the Park Manor community) each new movement during the initial period of transition has been under 24-hour police protection until such time as the danger has passed. Some homes have had police details for as long as two years.

On the other hand, it should be clearly understood that the overwhelming majority of non-white families (the Chicago Commission on Human Relations estimates some 20,000 family units in the last five years) have moved out of the established Negro community without incident of any sort.

The pattern has varied from community to community with population shifts in some neighborhoods taking place with no resistance all the way to the other extreme where vioence has occurred almost on a house-by-house basis.

There is attached hereto the record of such attacks as they have occurred in the community that has seen the greatest violence and agitation against the movement of Negro families. (See Appendix I.)

It has been the gathering of crowds demonstrating against the presence of Negroes that has created the most serious situations of racially inspired disorder in Chicago.

The following are summaries of events surrounding several of these major incidents taken from documentary material supplied by the Chicago Commission on Human Relations, an agency established under authority of an ordinance passed by the City Council of Chicago:

7200 South Eberhart, 1946

The first major crowd demonstration of the post war period occurred with the purchase and occupancy of the premises at the above address by a Negro doctor. On the night of June 30, 1946 arson was attempted on the garage at the rear of the home. The following evening the Park Manor Improvement Association, a local property owner's organization, held a meeting at a local church protesting the purchase and occupancy of this property by Negroes. On that same night approximately 2,000 people gathered in the streets surrounding this house. Missiles were thrown and windows were broken. As the crowd gathered the local Captain of Police called for reinforcements and 25 patrol cars were sent to guard the property and maintain the peace.

On the night of July 2, a similar gathering occurred. The crowd was very hostile, highly emotional and called for violent action. Vicious epithets were hurled at police who were present in large numbers and who firmly and quietly stood their ground. The Negro doctor did not appear in the community. This fact was judged by all officials as the only reason this situation did not break into dangerous violence. After a considerable period the police slowly pressed the crowd back at least two blocks, closed the area to foot and automobile traffic, and maintained control of the situation. One teen-age youth was arrested for throwing rocks and was later released to his parents after being severely reprimanded by the Juvenile Officer.

After the July 1 demonstration the doctor and his wife left the community and by July 3 had decided not to return although the local police captain had promised them continuous police protection. The property was subsequently sold by the doctor.

The Airport Home Disturbances, 1946

Airport Homes, a Veterans Emergency Public Housing Project on Chicago's far southwest side, was opened for occupancy in fall of 1946. By the end of October all but 59 of the 186 apartments had been occupied by legally selected tenants. During October a number of windows were smashed in the unfinished units of the project. Selection of tenants for the remaining apartments had been com-

pleted by the Chicago Housing Authority. Several Negro veterans were among these selectees scheduled to move in during the weeks of November 11 and 18.

At the end of October there was considerable tension in the community and petitions had been circulated and presented to the Housing Authority requesting that the apartments in the project be reserved for veterans living in the immediate neighborhood.

On Election Day, November 5, "squatter" families, all of whom were white, took over most of the remaining units. The "squatters" had taken all of the keys to the available apartments from the office of the project manager on the evening of November 4. Mixed reasons were given for this unauthorized move-in action, but it was verified that several of the "squatters" understood the move-in was to be, in part, an attempt to occupy available space so that Negroes could not move in.

The first Negro veteran, Mr. Theodore Turner and his family, was assigned to move in on November 16. Several meetings were reported to have occurred in the community on the night before the move-in. The gatherings were largely protest meetings against the Negro family moving in.

On the afternoon of Saturday the 16th, Mr. Turner's arrival at the project was the signal for the gathering of a hostile crowd. A car occupied by a Housing Authority official was tipped over by the crowd. An attempt was made to attack Mr. Turner as he was escorted from the project by police.

An automobile containing several Negro and white veterans who had come to the scene was also attacked as it was escorted from the area.

The crowd continued to grow in size and intensity. One of the leaders of the "squatter" movement attempted to talk to the crowd to the effect that all veterans regardless of race had a right to move into the project. The crowd shouted for action and howled down his pleas. Police reinforcements were called for. A violent rain dispersed most of the gathering.

The following day Mr. Turner informed the Authority that he had decided not to attempt to move into the project.

Over the weekend people from the community continued to stand around the apartment which had been rented to Turner. Bonfires were lit on various street corners in the immediate area of the project. On Sunday night an anti-Semitic demonstration occurred in front of the apartment of the acting temporary chairman of the proposed tenants council which had been friendly to Mr. Turner.

Most of the "squatters" moved out on December 2 on advice of counsel and white families began moving in on the morning of December 4. A crowd of some 200 persons which had gathered kept up a constant booing and shouting. Two Negro veterans arrived at noon. The crowd immediately ran toward the truck and the police formed to protect it. As it was driven into the project, stones, clods of earth and sticks were hurled at the vehicle and the police. As the crowd rushed toward the project with all available police reserve rushed to the point of entry to hold a perimeter. Women in the front ranks began to scratch, kick and slap police officers and those in the rear threw missiles at police and representatives of the press. A police lieutenant was struck in the temple by a rock and the captain severely kicked in the leg. This pattern continued throughout the day and evening with continuing attempts to break through the line and police efforts to hold the crowd back. A car containing a representative of a Negro veterans organization was tipped over.

The following evening violence flared again as reinforced police attempted to keep the crowd across the street from the project. Attempts to tip over a squad car were stopped by police using clubs. Six civilians were hospitalized and two patrolmen were given first aid. A cross was set afire in a nearby vacant lot.

Crowds gathered in the vicinity of the project for the next several days with sporadic violence occurring. Intensification of police activity gradually brought the situation under control.

(NOTE: The two Negro families stayed in the project until February, 1947. They moved shortly after shots were fired through the windows and side walls.)

Fernwood Homes, 1947

Fernwood Homes, an 87-unit Temporary Veterans Public Housing Project located on the far south side, was to be occupied in August, 1947. The nondiscriminatory policy of the Chicago Housing Authority as it would apply to the Fernwood Project was the subject of bitter criticism in the local community. Rumors that violence would occur if Negroes moved into the project were rife throughout the community.

The first families began to move in early the morning of August 12 with a small police guard present. Groups of people began to gather around the project but none of the white or Negro tenants was molested in any way. The entire day and evening passed without any physical violence and what verbal antagonism existed was diverted toward a canteen that had been established by a "Community Good Will Council," which had been organized for the purpose of welcoming residents of the project.

All through the following day, August 13, police maintained controls of traffic in and out of the project. About 8 P. M. people began to gather around the project. The crowd milled around on the sidewalk for awhile but were prevented from coming into the project area. In an apparent effort to draw police away from the project, they moved onto Halsted Street, a heavily traveled main arterial north-south highway.

Additional police arrived and unsnarled traffic, and the crowd again surged toward the project, setting several fires in the prairie between the street and the project. Police forcibly pushed this movement back to the street, two lieutenants being struck by rocks during this process. The density of the mob made it difficult to identify individual rock-throwers.

At the same time a crowd of several hundred people gathered at the north end of the project. However, a cordon of police reinforced by several squad cars prevented their entrance.

The crowd on the Halsted side, frustrated in its attempt to reach the project surged north on Halsted Street and began stoning passing Negro motorists. To meet this situation police diverted north-south traffic over to Green Street,

a side street west of Halsted. The mob being dispersed on Halsted moved across the open prairie to Green and continued stoning Negro-occupied cars in the traffic jam which occurred.

This situation continued until 1:30 A. M. when most of the gathering had been dispersed.

Tensions were reported growing in the Negro community as smashed up cars returned from the Fernwood area.

The next two nights saw an intensification of the stoning of the project and the smashing of cars and beating of occupants. Several retaliatory attacks were reported having been committed by Negroes against white people passing. The breaking up of concentration of the crowd left roaming gangs assaulting any Negro who came into view over an area extending as far away as a mile in every direction from the project. Police communications were taxed to the breaking point with principal reporting of outbreaks dependent on motorcycle couriers. Upward of 1,000 police officers finally began bringing the situation under control by making 22 arrests on the 14th, and 99 on the night of the 15th.

No exact figures were available as to the number of persons injured. An approximation might be made from the fact that over 60 suits were filed against the City of Chicago for recovery of damages incurred during the rioting.

Eight Negro veterans and their families continued to reside in the project. The only other incident of note occurring since the time of the rioting being a dynamite blast set off in March of 1948, the principal damage being to a unit occupied by a white veteran. All police details have long since been removed and no incidents have occurred.

St. Lawrence Street Disturbance, 1949

On July 25 during late afternoon, Mr. and Mrs. Roscoe Johnson, Negroes, occupied the premises they had purchased at 7153 St. Lawrence. A crowd of people began to gather. Fire was set to two mattresses being unloaded from the truck. Police were called and a detail was left to guard the home. Toward evening the crowd grew larger and grew in hostility. Fire-brands, stones and bottles were thrown through the windows. Police reinforcements tried

to move the crowd from the front of the house out of throwing range. By 1:30 A. M. this had been achieved.

During the following day about 200 people loitered around across the street from the home. By that evening police had established barricades against vehicular and pedestrian traffic for one full block in each direction from the home. Community residents and curiosity seekers began crowding up at the barricades. One group of teenagers began obstructing traffic. They carried a sign reading, "We don't want Niggers in our neighborhood." This sign was held in front of passing motorists who were asked if they agreed. As the driver would nod assent he would be permitted to continue on his way.

At this point vigorous police action to clear the area was taken. Although three cars containing Negroes were reported stoned as they drove along nearby 71st Street, the clearing of the crowd which consisted of some 1,500 persons brought the demonstration to an end.

Peoria Street Disturbances, 1949

Shortly after November 1, 1949, a piece of property several blocks away from 56th and Peoria Streets was purchased by a Negro. The purchaser reported that he had been asked to resell his property and was offered a substantial profit. When he refused the offer he was told that "the people in the community would never allow a Negro to occupy the premises and that the house would be burned to the ground." The rumor of this sale was circulated through the community during the weekend of November 5 and 6. Signs were distributed house to house reading, "This property is not for sale." (A police detail was placed at the above property, and the family subsequently moved in without incident.)

On the night of November 8, 1949, Mr. Aaron Bindman, white, Secretary-Treasurer of the Warehouse and Distribution Workers Union, had a gathering of 16 shop stewards of his union in his recently purchased home at 5643 S. Peoria Street. Eight of the guests were Negroes. During the course of the evening about 50 people gathered in front of the house protesting the presence of Negroes. Bindman reported being threatened by members of the group. Police

were called and escorted the guests out safely, leaving a police detail behind.

The following evening, November 9, a crowd of about 200 persons gathered in front of the house. Rocks were thrown and windows broken as the crowd applauded and cheered. Most of those gathered on the street appeared to believe that Negroes had either purchased or were occupying the house. Additional police pushed the crowd back out of throwing range.

By Tuesday night, November 10, the crowd which had grown to about 400 people was apparently more aware of the exact nature of the ownership and occupancy of the premises (partly accomplished through reports published in the press to dispel the rumors which had been circulating). About 8:30 P. M. the crowd moved menacingly toward the home shouting, "Let's get them out," "burn the house," "dirty kikes," "Communists." Police held the line while a barrage of rocks flew overhead and broke more windows. Police reinforcements moved the gathering back out of throwing range.

A different type of activity developed when groups of young men, 19-25, apparently well known by most of those present, began to move around the periphery of the crowd. Also present were smaller groups of young men who looked like students. (The University of Chicago lies two miles directly east of 56th and Peoria.) The groups of "local" youths began to spot these "strangers" and ask for identification. Unsatisfactory explanations of "outsiders" resulted in assaults. Ten arrests were made.

The night of Friday, November 11, marked the peak of the violence. Police had thrown up barricades for a block in each direction. Around 7:30 P. M. groups began to gather on the periphery of the blockaded area as well as within the bockade near the house. Upwards of 2,000 people moved about in the area. The pattern of the roving gang and subsequent assaults became more widespread. These were principally directed at youths with Semitic-looking features. (Several non-Jews reported being assaulted in the area to the accompaniment of anti-Semitic verbal abuse.) Several police officers were hurt in these individual fracases. This activity spread over to Halsted Street as victims were chased by these gangs. A jeep was overturned on Halsted

Street. Over 200 police were brought in the area. All bars were ordered closed. Twenty-seven arrests were made.

It was about 3 A. M. before some degree of order was restored.

On Saturday night, an overwhelming police concentration was sent into the area. Orders were to prevent any gathering. Police encountered some difficulty at several points and made 23 arrests during the course of the evening. Three Negro boys were assaulted as they attempted to board a streetcar at 55th and Halsted.

Several concentrations did occur, the most unruly being at 56th and Halsted where the crowd attempted to burn a figure in effigy. A tightening of police operations marked early Sunday morning as the time of the final suppression of violence.

(There was considerable criticism of police laxity in the handling of this incident in the daily press. It was pointed out that many of those arrested were the "victims" rather than "attackers." There was also considerable controversy because of the alleged political affiliations of Bindman, and the "outsiders" who came into the area. The most constructive step growing out of this disturbance was the beginning of a police training program in Human Relations.)

INCIDENTS OF ANTI-NEGRO ATTACKS IN PARK MANOR COMMUNITY.

1945-1950

The following incidents occurred in a square-mile area on Chicago's South Side. This area represented the highest point of resistance to the movement of Negro families:

1945

6715 South Michigan — **June 6**

Property stoned, windows broken while a group of Negro men were unloading a moving van. Building later set on fire causing considerable damage.

6743 South Wabash June 23

Negro family moved in. Windows broken. Approximately 200 people gathered on the street, remaining from 8:30 P. M. to 1:30 A. M., shouting "burn them out." Bottle of inflammable liquid thrown into house. Back porch set afire while police on guard. Second attack occurred within one week.

1946

7300 South Eberhart June 30

Garage set afire when Dr. Cooper purchased this property. Park Manor Improvement Association held a meeting at a local church protesting the purchase and occupancy of this property by Negroes. On the same night about 2,000 people gathered in the streets surrounding the house. Missiles were thrown and windows broken. Garage set afire. Twenty-five patrol cars sent to maintain order. On July 2, a similar crowd gathered. One teen-age youth arrested for throwing rocks.

1947

6841 South Wabash May 5, June 5

Thirteen windows broken prior to move-in of Negro family. Several weeks later, crowd gathered. Stones, bolts and bricks hurled at building. False fire alarm turned in. Gasoline thrown on rear fence but not ignited. Two adults and one juvenile arrested. Permanent police detail established.

August 16

Inflammable liquid thrown into house during crowd demonstration in spite of presence of police guard.

September 6

Car of three Negro friends visiting the Millers was stoned.

6800 Block on Wabash

Negro woman accosted on street by white man who shouted "We don't want any 'niggers' around here, get off

the street. This is a warning to you." Warrant sworn and defendant put on peace bond.

6710 South Wabash Avenue — October 15

Crowd gathered when it was learned Negro family was to move in. False fire alarm turned in. Prompt police action dispersed crowd. Police guard established.

3849 South State Street — October 31

Reported on October 30 that Negroes were to move in. Rear porch set afire by unknown persons on night of October 31. Police guard established.

6715 South Indiana Avenue — November 26

Shotgun blast fired through windows of apartment shortly before Negro family moved in. Police guard established.

1948

6817 South Calumet — February 21

Crowd of 125 people gathered the night after Negro family moved in. Teen-agers ran around back and threw firebrands, two Molotov cocktails, and a fused missile of fine 12-gauge shotgun shells at building and through window. Crowd in front of building smashed windows. Two-men police detail had to send for reinforcements which finally dispersed crowd. Police detail still assigned to building.

6837 South Wabash — May 22

Suspicious fire day after Negroes seen looking at building.

6823 South Calumet — May 19

Kerosene poured on rear porch, failed to ignite. Two rear windows broken.

Fire set on back porch. — August 18

Fire set on back porch. — September 4

Fire set on back porch. — December 4

6810 South Parkway — July 9, 10

Two windows broken before Negro family moved in.

Fire set. — August 1

$200 damage from fire set. — August 23

Window broken. — August 25

Small fire, nominal damage. — September 6

September 13

Two bottles of inflammable fluid found in rear.

September 15

Molotov cocktail touched off near owner's car.

Garage set afire. — November 9

Fire under rear steps. — December 3

6970 S. Anthony — Aug. 15

White women received threatening phone calls.

$6000 damage from fire set. — Aug. 20

6740 S. Wabash — Aug. 4

Fire set—building in process of sale.

6748 Prairie — Aug. 9

Crowd gathered after building shown to Negroes.

22-36 E. 70th St. — Sept. 11

Windows broken.

6855 Anthony — Sept. 8

Car stoned by white boys as Negro family was moving in.

6820 S. Calumet — Oct. 27

Fire set destroying rear porch and kitchen.

6810 S. Indiana — Oct. 9

Fire set under rear stairs.

6816 S. Calumet — Dec. 4

Fire set in yard. No damage.

6838 Prairie — Sept. 25

Windows broken after purchase by Negroes.
Windows broken again.

6816 S. Indiana — Sept. 25

Negro assaulted in front of above address while making neighborhood canvass for real estate agency.

1949

6927 S. Prairie — Feb. 6

Rear window broken.

7047 S. Indiana — Mar. 24

Window broken, garbage containers scattered.

6936 S. Park — Mar. 25

Rear porch set fire.

215 E. 70th St. — Apr. 13

Windows broken.

6840 S. Calumet — Apr. 21

Automobile set afire.

6810 S. Park — May 6

False fire alarm turned in.

7047 S. Indiana — May 8

Windows broken.
Windows broken. — May 27

6855 Anthony and 6902 Anthony — May 13

6855 Anthony—Attempted arson (one apprehension).
6902 Anthony—Arson (no conviction).

7116 Eberhart — **May 31**

Crowd demonstration and bricks thrown at property owned and occupied by white while premises were being shown to prospective Negro purchasers.

215 E. 70th Street — **June 3**

Brick thrown through windows.

7137 S. Prairie — **June 7**

White occupancy—property shown to Negroes—window broken.

7047 S. Indiana — **June 9**

Window broken.

7023 S. Vernon — **June 14**

Bricks thrown at house and garage.

6958 S. Prairie — **June 15**

Fire destroyed rear porch.

7044 S. Vernon — **June 11**

Two windows broken.

7044 S. Vernon — **June 14**

Eight windows broken.

6920 S. Parkway — **June 15**

Bottle thrown.

6958 S. Prairie — **June 25**

Street fight.

6800 block on Wabash — **June 25**

Negro assaulted.

6958 S. Prairie — June 25

Altercation between Negro owner of building and white passerby.

6916 S. Wabash — June 25

Negro guests assaulted on street.

7153 St. Lawrence — July 25

Major disturbance when first Negro family moved south of 71st St. (See separate documentary.)

318 E. 70th St. — June 25

Window broken.

6841 S. Wabash — June 25

Light bulbs filled with paint smashed on building.

6758 S. Calumet — July 2

Paint splattered on building.

6951 S. Vernon — July 15

Windows broken.

73 E. Marquette Road — July 19

Small fire set.

6946 S. Anthony — July 19

Arson. Vacant building had been shown to Negroes.

7023 S. Vernon — Aug. 23

Garage set afire.

7000 S. Vernon — Aug. 23

Kerosene bottle with matches attached thrown at building recently purchased by Negroes.

6951 S. Vernon — Aug. 23

B B shots fired through window.

7047 S. Indiana — Sept. 27

Shot fired through window of new Negro owner.

7029-31 S. Prairie — Sept. 29

Windows broken, paint splattered on building.

6824 S. Anthony — Sept. 26

Paint splattered on building advertised for sale "to colored".

7029-31 S. Prairie — Oct. 3

Windows broken in building offered for sale.

359 E. 70th St. — Oct. 26

Five B B shots through windows.

215 E. 70th St. — Dec. 9

Windows broken.

6961 S. Eberhart — Dec. 9

Fire set in hallway.

7043 S. Indiana — Oct. 6

Brick thrown through window.

1950

6927 S. Prairie — Feb. 1

Arson—garbage covered with oil—set afire.

358 E. 70th St. — Feb. 1

Garbage can set under back porch and ignited.

6838 S. Anthony — Feb. 4

Garbage set under porch and ignited.

6950 S. Park — Feb. 4

Back porch set afire.

6841 S. Wabash — Feb. 4

Paper on back porch ignited.

6909 S. Calumet — Apr. 21

Fire set.

6927 S. Calumet — Apr. 21.

Fire set in vacant building reported for sale.

7153 St. Lawrence — May 13

Fire set to garage.

7142 Rhodes — June 28

Crowd gathered as prospective Negro purchasers inspected building. Windows broken in rear garage.

7053 Eberhart — June 23

Crowd gathered as building was being inspected by prospective Negro purchasers. Almost every window in house broken as they left.

7011 S. Eberhart — June 27

Attempted arson.

7153 St. Lawrence — Aug. 11, 13 and 16

7151 St. Lawrence

7224 St. Lawrence

These incidents of crowd demonstrations are described in separate documentary.

7308 S. Wabash — Aug. 25
Window broken.

7200 S. Park — July 14
Window broken.

7041 St. Lawrence — Oct. 5
3 windows broken.

24 E. 70th Place — Oct. 30
Windows broken.

7348 S. Vernon — Nov. 19
Paint smeared on building.

7254 Eberhart — Nov. 28
Windows broken and paint smeared in hallway.

7053 S. Eberhart — Nov. 14
Five windows broken.

OUTLINE OF LABOR VIOLENCE IN ILLINOIS.

A. Building Trades.

1899. The building contractors of Chicago formed a new organization with the intention of forcing the unions to sign at terms more agreeable to the contractors, even though this might mean breaking existing contracts. In February, about 26,000 building tradesmen struck. During March, the contractors decided to resume operations with nonunion labor. Clashes resulted, between pickets and strikebreakers. The homes of strikebreakers were picketed, and many were assaulted.

Beginning in June, the unions started to withdraw from the strike and sign on the contractors' terms. In February 1901, the carpenters capitulated and thereafter the re-

maining unions fell into line. During the strike more than 150 assaults occurred, and 5 were killed.

(Perlman and Taft: History of Labor in the United States, pp. 86-87.)

1921: On September 21, Federal Judge Kenesaw M. Landis handed down an arbitration award in the building industry that disrupted the Chicago area for months. In addition to passing judgment on certain work rules of the building trades unions, which was contrary to usual practice, the award set some rates below those offered by the contractors. The building trades unions were divided among themselves as to whether or not to accept the decision, and the carpenters led a revolt against the award.

The Citizens' Committee to Enforce the Landis Award was organized by the Illinois Manufacturers' Association and similar groups. It raised a large sum of money to import strikebreakers and furnish protection to open-shop jobs. The intimidation by the Citizens' Committee was paralleled by the bombing of jobs working under Landis Award conditions, with several fatalities.

(Perlman and Taft: History of Labor in the United States.)

B. Men's Clothing Industry.

1904. In November occurred a strike of the United Garment Workers of America in the special order branch of the clothing industry. The employers were determined to drive the unions from the shops, and establish an open-shop. About 8,000 men and women were involved in the strike. It lasted nearly a year, with occasional violence.

(10th Annual Report of the State Board of Arbitration of Illinois.)

1910. In September, approximately 40,000 workers, largely unorganized, went on strike under the leadership of the United Garment Workers. In December, two pickets were shot and killed. There were continuous assaults on the picket lines by police and private detectives protecting nonstrikers. In all, during the strike, 875 were arrested, and seven were killed.

(Chicago Joint Board, Amalgamated Clothing Workers of America.)

1915. A strike was called to organize the unorganized shops. About 25,000 garment workers participated. In one riot, one striker was shot and killed, and a large number of others were wounded.

1919. During the year, there was a series of strikes as part of an organizing drive. There were constant fights and assaults.

C. Meat Packing.

1904. This year saw two strikes in the Chicago meat packing industry. In the first, as part of a nationwide strike, about 20,000 workers walked out. During July 14-15, in a clash between strikers and nonunion men, eight people were killed.

The strike was won in eight days. One of the conditions under which the workers went back was that all strikers would be rehired within 45 days. The rank and file of the union in Chicago soon came to the conclusion that the companies were not living up to their agreements, and despite the reluctance of the union leadership, went out on strike again. The companies reacted swiftly, and 1,400 strikebreakers, mainly Negroes, were brought in from the South. During August, a serious string of riots broke out, some racial in character. The police fired into crowds and used their clubs freely, with the result that some workers were killed, and others injured.

(Perlman and Taft: History of Labor in the United States.)

1921. The Big Five Packers, acting in concert, lowered their wages and began setting up company unions as part of the open-shop movement that was sweeping the country. A series of strikes was provoked by this activity. Negro strikebreakers were imported and this led to race riots in the stockyards districts. Eight union officials were killed during the strike.

(Lewis Corey: Meat and Man. Edwin E. Witte: Industrial Relations in Meat Packing. Cayton and Mitchell: Black Workers and the New Unions.)

D. Mining.

1898. The miners at Pana and Virden went on strike, or rather, were locked out. On April 1, 1897, mine operators of the Chicago and Alton subdistrict ceased production on the grounds that the wage rates set for that area were too high.

At Pana, the miners agreed to take a reduction suggested by the State Board of Arbitrators. The operators ignored the findings. Negro miners were imported, and this eventually lead to violence.

At Virden, locked-out miners remained orderly until October, when an attempt was made to bring in Negro miners from Alabama under armed guards. On October 12, there was a clash between the union miners and the guards. Sixteen men were killed and several wounded.

(4th Annual Report of the State Board of Arbitration of Illinois.)

The so-called Tanner Act was an outcome of this clash. Governor Tanner believed that the importation of strike-breakers guarded by armed men not citizens of Illinois and who were not authorized to perform police duty in the state was contrary to good public policy and unfair to workers. The Tanner Act, passed in 1899, prohibited employers from inducing workmen to go from one place to another within the state or from bringing workmen into the state through the use of false representations concerning the kind of work and the conditions under which it was to be performed.

(Eugene Staley: History of the Illinois Federation of Labor.)

1907. On November 19, about 400 quarry workers around Joliet struck after receiving a wage reduction. On November 22, 500 members of the Quarrymen's Union and nonunion employes of the Western Stone Co., met in Joliet and a riot ensued, with gunfire and clubbing on both sides. Many people were injured.

(11th Annual Report of the State Board of Arbitration of Illinois, 1908.)

1910. On April 1, about 72,000 members of the United Mine Workers of America went on strike, and about 2/3

of them remained out for 23 weeks. The strike was accompanied by intermittent violence.

(12th Annual Report of the State Board of Arbitration of Illinois, 1910.)

1916. On June 3, Florspar miners in Hardin county went on strike. The sheriff swore in as deputies to maintain order, men whose salaries were paid by the companies. Clashes between strikers and these deputies resulted in two men being seriously injured. In addition, about 100 families were forced to leave their homes by thugs employed by the companies.

(Annual Report of the State Board of Arbitration of Illinois, 1917.)

1920. A strike of spar miners began on September 21, at Rosiclare. Although the strikers were advised by the state mediators to return to work, they voted to continue the strike. On March 1, 1921, mediators were informed that shooting and mob violence had occurred. Investigations were carried out with county and city authorities without obtaining any definite evidence as to the guilty parties.

(4th Annual Report, Illinois Department of Labor, 1920-21.)

1922. This was a year of widespread strikes in both the anthracite and bituminous coal fields.

On June 21, the Southern Illinois Coal Co. began to load and ship coal for commercial purposes, contrary to a previous agreement with the union. To do this they employed men from another union. A group of miners attempted to confer with the men who were working, but were greeted by machine gun fire that killed two of them.

"The arrival from Chicago of a band of Hargreaves Secret-Service operatives to guard the steam shovel men led to the opening of hostilities on the strikers' side, resulting in the wounding of three guards. . . . Crowds gathered in West Frankfort, Herrin and neighboring towns, possessed themselves of arms, and began moving to the Illinois Coal Company's mine surrounded by a stockade. The guards opened fire. The miners returned it and firing became general. . . . An armistice was agreed upon and the besieged surrendered. So strong, however, were the

aroused passions that a number of the disarmed captives were butchered. Altogether nineteen strikebreakers and two strikers were killed."

(Perlman and Taft: History of Labor in the United States, pp. 483-84.)

1932. As the result of an agreement signed by union officials and mine owners of Illinois without the consent of the miners, a revolt against both the District and International officers swept the state. The insurgents, numbering about 20,000, attempted to gain control of various mines, and this led to clashes between themselves and other miners, as well as with the police.

On September 1, the Progressive Miners of America was formed in Illinois and Indiana, as an outgrowth of the above revolt. This led in turn to a long series of bloody and fatal clashes between the new organization and the United Mine Workers of America.

E. Railways.

1877. This year witnessed a strike, or what might more accurately be called a rebellion on the railroads of the United States. It started in West Virginia on the Baltimore and Ohio Railroad. In less than four days the strike was effective in eleven states including Illinois. The strike began as a protest against lowered wages and spread so rapidly because most railroad workers had grievances of some kind.

The strike was accompanied by rioting and burning of railroad property. Though the center of the strike was in Pittsburgh and Philadelphia, Illinois, and particularly Chicago, had its share of the violence. There were continuous clashes between the police and mobs. Federal troops were requested by the Governor of Illinois, and were dispatched.

(Edward Winslow Martin: The History of the Great Riots. Ohio D. Boyle: History of the Railroad Strikes.)

1894. The strike of the American Railway Union against the Pullman Co. is well known in American labor history. It began on May 11 as a strike in the Pullman plant, but

on June 26 spread to become a boycott by all railway workers of Pullman cars wherever they were to be found. The strike ended in a conclusive defeat for the union in July. In addition to the violence displayed, this strike is significant for the widespread use of the injunction.

The strike was characterized by a great deal of violence. During the strike, the fatalities, arrests, indictments and dismissal of charges for strike offenses in Chicago and vicinity were as follows:

Shot and fatally wounded	12
Arrested	515
Arrested under United States statutes and against whom indictments were found	71
Arrested against whom indictments were not found	119

Arrests were for murder, arson, burglary, assault, intimidation, riot, inciting to riot, etc.

(United States Strike Commission: Report of the Chicago Strike of June-July, 1894.)

One outcome of the strike was the legal action taken against the company owned town of Pullman. The Illinois Supreme Court upheld the contention that the company was not authorized to acquire large real estate holdings to establish and manage a town. This ruling resulted in the dissolution by the Pullman Co. of its holdings in the community.

(Almont Lindsay: The Pullman Strike. United States Commission on Industrial Relations: Final Report and Testimony.)

F. Steel.

1919. Under the direction of William Z. Foster, the various craft unions with jurisdiction in the steel industry, formed a loosely knit organization to spark an organizing drive. Workers in Pennsylvania, Ohio, West Virginia, Illinois and Indiana responded, and a strike was set for September 22. By October 1, 365,000 men were out. By the middle of January, however, the strike was broken, as a result both of the opposition of the industry, and the lack of coordination and cooperation among the craft unions.

Companies hired labor-detective agencies to stir up animosities between various nationality groups. Also, Negroes were imported from the South as strikebreakers, and the strike was accompanied by acts of violence. The strike was attended by a reign of terror affected by municipal police, deputy sheriffs and company police.

(J. Raymond Walsh: C.I.O.: Industrial Unionism in Action.) (Report, U. S. Senate: Investigation of Strike in Steel Industries.) (Commission of Inquiry, Interchurch World Movement: The Steel Strike of 1919.)

1937. On May 26, as part of the drive to organize the steel industry by the Steel Workers' Organizing Committee, the firms known as Little Steel were struck. Republic Steel in the Chicago area was one of these. On May 30, a parade of strikers, marching in front of the plant, were fired upon by police and guards. Ten were shot to death. At least eight others died as a result of this incident, known as the Memorial Day Massacre, and violence in subsequent months.

(Mary H. Vorse: Labor's New Millions. LaFollette Civil Liberties Committee: Hearings.)

G. Teamsters.

1902. On May 25, a strike of teamsters employed by the packing houses began. At the end of the first week, the packers determined to resume shipments. A caravan of meat wagons was formed and headed for the retail district under police guard.

". . . At this juncture the teamsters throughout the city came to the rescue of their striking brethren and blocked the passage of the meat wagons in every conceivable manner. Hundreds of wagons blockaded the streets at street intersections, street cars were stopped, meat wagons overturned and bricks, stones and all kinds of missiles were hurled at the drivers and at the police who were attempting to protect them.

"The riots were the most serious that had occurred in Chicago since the railway strike in 1894. Several hundreds of persons were injured during the riots, many being

clubbed by the police and several of them shot. It may be regarded as little short of miraculous that no persons were killed outright."

(7th Annual Report of the State Board of Arbitration of Illinois, 1902, pp. 46-47.)

1904. On April 6, the teamsters struck Montgomery Ward & Co. in sympathy with the United Garment Workers of America, who were out on strike. The strike eventually spread so that 5,000 teamsters in Chicago became involved. Violence began when Ward's attempted to start deliveries. Employers hired special deputies and private detectives to ride with the nonunion drivers. They also imported a large number of Negroes.

The strike lasted 110 days. Fourteen deaths are directly traceable to the strike, while hundreds were injured.

(10th Annual Report of the State Board of Arbitration of Illinois, 1905.)

H. Other Incidents.

1886. On May 3, a clash took place between police and workers at the McCormick Harvester Works in Chicago, growing out of the agitation for the eight hour day. Several were killed, and a score or so wounded.

A protest meeting was called for May 4 at Haymarket Square by the anarchist movement. The meeting was proceeding peacefully when suddenly the police ordered it to disperse. A bomb exploded, killing one policeman and fatally wounding several others. The police fired into the crowd, killing and wounding many. Out of this incident, known as the Haymarket Riot, grew the widely known anarchist trials.

". . . the reaction from Haymarket gave occasion for the enactment of legislation distinctly unfavorable to labor organizations, hampering their activities and making agitation dangerous. Such measures wer the Cole Anti-Boycott Law and the Merritt Conspiracy Law. . . ."

(Eugene Staley: History of the Illinois Federation of Labor, p. 71.)

The Merritt Law was passed in 1887. It held that "persons who by speech or print might advise any unlawful

course of action were to be held responsible for all the consequences, and if life were lost they were to be deemed guilty of murder, whether any connection between the advice given and the actual crime could be shown or not. . . ."

(Eugene Staley: History of the Illinois Federation of Labor, p. 161.)

The Merritt Conspiracy Law was repealed in 1891. The Cole Anti-Boycott Law held until 1929.

1902. On May 30, 1901, a strike began at Allis-Chalmers in Chicago and continued for more than a year. The issue was union recognition and wages. The company secured a force of nonunion men and operated its plant under guard. In clashes between pickets and nonunion workers, two men were killed, and nearly 100 assaulted.

(7th Annual Report of the State Board of Arbitration of Illinois, 1902.)

BIBLIOGRAPHY.

Boyle, Ohio D. History of the Railroad Strikes. Washington, D. C.: Brotherhood Publishing Co., 1935.

Cayton, Horace C. and Mitchell, George S. Black Workers and the New Unions. Chapel Hill: University of North Carolina Press, 1939.

Chicago Joint Board, Amalgamated Clothing Workers of America. The Clothing Workers of Chicago, 1910-1922. Chicago: Amalgamated Clothing Workers of America, 1922.

Corey, Lewis. Meat and Man. New York: Viking Press, 1950.

David, H. History of the Haymarket Affair. New York: Farrar and Rinehart, 1936.

Illinois. State Board of Arbitration. Annual Reports.

Illinois. State Department of Labor. Annual Reports.

Interchurch World Movement Commission of Inquiry. The Steel Strike of 1919. New York: Harcourt, Brace and Howe, 1920.

La Follette Civil Liberties Committee. Hearings. U. S. Senate Subcommittee on Education and Labor, No. 140,000. Washington, D. C.: United States G.P.O., 1937.

Lindsey, Almont. The Pullman Strike. Chicago: University of Chicago Press, 1942.

Martin, Edward Winslow. The History of the Great Riots: being a full and authentic account of the strikes and riots on the various railroads of the United States and in the mining regions. Philadelphia: National Publishing Co., 1877.

Perlman, Sleig, and Taft, Philip. History of Labor in the United States. New York: The Macmillan Co., 1935.

Staley, Eugene. History of the Illinois State Federation of Labor. Chicago: University of Chicago Press, 1930.

U. S. Commission on Industrial Relations. Final Report and Testimony. 64th Congress, 1st Session. Senate Document No. 415, Volume X. Washington: United Press G.P.O., 1895.

U. S. Senate. Report. Investigation of Strike in Steel Industries, Vol. A, 289. 66th Congress, 1st Session. Washington, D. C.: United States G.P.O., 1919.

U. S. Strike Commission. Report of the Chicago Strike of June-July, 1894. Washington, D. C.: United States G.P.O., 1895.

Vorse, Mary Heaton. Labor's New Millions. New York: Modern Age Books Inc., 1938.

Walsh, J. Raymond. C.I.O.: Industrial Unionism in Action. New York: W. W. Norton and Co., Inc., 1937.

Witte, Edwin E. "Industrial Relations in Meat-Packing", in Labor in Postwar America, Colston E. Warne, Ed. New York: Remsen Press, 1949.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 118

JOSEPH BEAUHARNAIS,
Petitioner,

v.

THE PEOPLE OF THE STATE OF ILLINOIS.

PETITION FOR REHEARING

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Dated: New York, N. Y., May 9, 1952.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 118

JOSEPH BEAUHARNAIS,
Petitioner,

v.

THE PEOPLE OF THE STATE OF ILLINOIS.

PETITION FOR REHEARING

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Joseph Beauharnais, respectfully petitions for a rehearing of the decision of this Court in this case on April 28, 1952, which affirmed petitioner's conviction for violation of Section 224a of Division 1 of the Illinois Penal Code.

This petition requests a rehearing solely on the holding of this Court that, "Libellous utterances, not being within the area of constitutionally protected speech, it is unnecessary, either for us or for the State courts, to consider the issues behind the phrase 'clear and present danger.'" P. 16, Slipsheet Opinion. (All page references hereinafter are to the Slipsheet Opinion unless otherwise indicated.)

We do not ask for a rehearing on this Court's decision that the standards laid down by the statute are sufficiently

definite to meet the constitutional requirements of the due process clause of the Fourteenth Amendment. This question was presented to the Court by the parties' briefs, was argued thoroughly at the oral argument; though the decision held against us, we would deem a rehearing on this point inappropriate. However, the contention that utterances libelling groups are not within the area of constitutionally protected speech was not pressed on the Court in briefs or in oral argument. We suggest that a rehearing is appropriate under such circumstances, particularly when as here, the holding is not merely a reaffirmation or new application of a prior holding, but is completely novel. We suggest that a rehearing is particularly appropriate here because, although this holding of this Court is supportable by older *dicta,* there is other and later *dicta* which is *contra,* and because the decision of this Court has impliedly overruled prior decisions of this Court in at least three major cases, and has overruled this Court's express decision in another major case.

POINT I

The Court decided that utterances libelling groups were not within the area of constitutionally protected speech, though this proposition had never been pressed upon it, and though the point was a novel one never before decided by this Court.

(A) Decision on an issue of such momentous implications not pressed before the Court should not be made without full argument.

(1) This question was never pressed before the Court.

Petitioner's brief took the position that the contents of petitioner's diatribe were constitutionally protected.

Respondent denied this only formally in two short paragraphs without citation of a single case in point (Respondent's Brief, p. 4). Counsel recollects that this proposition of law was not denied by Illinois on the oral argument, nor did any of the Justices of this Court take petitioner's counsel to task for having alleged this proposition. See *Arguments before the (Supreme) Court*, 20 U. S. Law Week 3141 ff. The Supreme Court of Illinois indeed had held that the clear and present danger was applicable (R. 39-40).[1]

The Court thus decided a question not argued before it. We need look no further than the opinion in this case for authority that this Court should not decide questions not pressed upon it by the parties. This Court stated on page 14:

> "Neither by proffer of evidence, requests for instructions, motion before or after verdict did the defendant seek to justify his utterance as 'fair comment' or as privileged. Nor has the defendant urged as a ground for reversing his conviction in this Court that his opportunity to make those defenses was denied below. And so, whether a prosecution for libel of a racial or religious group is unconstitutionally invalid where the State did deny the defendant such opportunities is not before us."

Three of the Justices of the Court who subscribe to the majority opinion in the case at bar (Mr. Chief Justice Vinson, Mr. Justice Frankfurter, and Mr. Justice Burton) vigorously contended in *Terminiello* that a decision of

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[1] Our contentions were that (1) the test was improperly applied (2) in the absence of a finding by the trial court or jury of the existence of a clear and present danger.

this Court on the basis of points not raised before it in any stage of the proceedings nor raised below was improper. *Terminiello* v. *City of Chicago*, 337 U. S. 1 (1949).

(2) The question thus decided without argument is a monumental one.

This decision sustains the constitutionality of all state criminal libel laws, individual and group, in the absence of a clear and present danger.[2] All this without a hearing having been had on this issue, and without any prior holding by the Court to this effect. Counsel for petitioner share the fears of Mr. Justice Black and Mr. Justice Douglas that a weapon has now been given to enemies of minority groups. Without a requirement of a finding of a clear and present danger there is no way in which this Court could ever overturn a conviction for criminal libel in any of the instances set forth on page 8 of Mr. Justice Black's opinion and page 3 of Mr. Justice Douglas' opinion.

The majority was careful to point out that it would not decide the issue of constitutionality of outlawry of libels of political parties. But of course, political parties are not exempt from being prosecuted under the Illinois group libel law here sustained. Thus political advocacy might be restricted even under this decision. If libellous utterances are not within the area of constitutionally protected speech as this Court holds, one may inquire whether *any* free speech question would be raised if libel of political parties were outlawed. While this Court points out that in such a situation "the whole doctrine of fair comment as indispensable to the democratic political process would come into play" (p. 13, fn. 18), this Court also pointed

[2] A group libel law has been introduced into the House of Representatives since this Court's decision in this case.

out that the defense of fair comment was protected by the Illinois law here (p. 14, fn. 19). Thus the one distinction suggested by the Court is an irrelevant one. Certainly "the whole doctrine of fair comment as indispensable to the democratic political process" is involved in this statute since it penalizes utterances even when made by political parties. We can see no basis upon which this Court could later hold constitutional a law outlawing libels of political parties unless it were to do so on the due process ground that it would be "a wilful and purposeless restriction unrelated to the peace and well-being of the State" (p. 8). In view of the long history of political conflict in the state of Illinois, we find it difficult to comprehend how this Court could upset such a statute of Illinois if it came before it. We point out that Illinois conceded on the oral argument that if this statute would be upheld, a statute outlawing libels of political parties would also have to be held constitutional.[3]

(B) The decision on this point is the first holding of this Court on this issue; while supportable by *dicta* it is directly contrary to a more recent holding by this Court and impliedly overruled three major recent decisions.

We do not deny that *dicta* exist to the effect that libellous words—directed against an individual—can be criminally punished without raising a constitutional problem.[4]

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[3] In this connection it is interesting to note that while Illinois was asked by Mr. Justice Black to include, in its memorandum on labor and racial violence in Illinois, the record of political riots (20 U. S. Law Week 3143, col. 2), no such record was included.

[4] As this Court stated, it has also been stated in *dictum* that obscenity is exempted from constitutional protection. But this Court was in error when it stated that "Certainly no one would contend that obscene speech * * * may be punished only upon a showing of such circumstances. (of clear and present danger)." P. 16. For it was squarely held by Judge Curtis Bok that obscenity could not be

However, the most recent *dicta* on the subject are directly *contra*. Thus, in *American Communications Assn.* v. *Douds*, 339 U. S. 382, at 412, Mr. Chief Justice Vinson stated that an individual is "permitted to advocate *what he will*" (emphasis supplied) in the absence of the existence of a clear and present danger, and this Court in *Dennis* v. *U. S.*, 340 U. S. 494 at 510, adopted the rule as laid down below that "*In each case* [courts] must ask whether the gravity of the 'evil', discounted by its improbability, justified such invasion of free speech as is necessary to avoid the dangers." (Emphasis supplied.) While agreeing with the majority in *Dennis* holding that advocacy of revolution is constitutionally protected, we wonder upon what rationale such speech is protected by constitutional guarantees whereas libellous statements of groups are not.

Moreover, the decision in this case is directly *contra* to this Court's decision in *Cantwell* v. *Connecticut*, 310

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punished except upon a showing of such circumstances. *Commonwealth* v. *Gordon*, 66 Pa. Dist. & Co. R. 101 (1949). This test was expressly approved and Judge Bok's decision upheld by the Superior Court of Pennsylvania *sub nom.* *Commonwealth* v. *Feigenbaum*, 166 Pa. Super. 120, 70 A. 2d 389. The Supreme Court of Pennsylvania denied leave to appeal in an unreported *per curiam* order on March 30, 1950, which read as follows: "Allocatur refused, without, however, approving the test of 'clear and present danger' as applied to alleged obscene literature adopted by Judge Bok in the Quarter Sessions and apparently approved by the Superior Court." It should be noted that the Court did not disapprove of the test.

In addition, it was contended before this Court in a brief of the American Civil Liberties Union as *amicus curiae* in *Doubleday and Co., Inc.* v. *New York*, No. 11, October Term 1948, that obscene speech could not be punished except upon a showing of such circumstances. Whether this Court ever ruled upon this contention is impossible to say, for the decision below was affirmed by an equally divided Court without opinion. *Doubleday & Co., Inc.* v. *New York*, 335 U. S. 848. Of course, the question of the limitation of obscenity by the clear and present danger test need not be decided in this case in any event.

U. S. 296, holding that language denouncing the Roman Catholic Church as "an instrument of Satan" was protected by the First Amendment. Said this Court at page 310,

> "In the realm of religious faith, and that of political belief, sharp differences arise. In both fields the tenets of one may seem the rankest error to his neighbor. *To persuade others to his own point of view the pleader, as we know, at times, resorts* to exaggeration, *to vilification* * * *, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.*" (Emphasis supplied.)

In *Douglas* v. *City of Jeanette*, 319 U. S. 157 (1943), the constitutional guarantee of free speech was held to apply to a description of the Roman Catholic Church organization as a "harlot".

In *Kunz* v. *N. Y.*, 340 U. S. 290, this Court held that the guarantee of the First Amendment applied to an address delivered on the streets of New York vilifying Jews as "Christ-Killers."

In *Terminiello* v. *City of Chicago*, 337 U. S. 1 (1949), this Court held the constitutional guarantee of free speech applicable to language much more libellous of racial and religious groups than the language in question here. For example, as quoted from the dissenting opinion of Mr. Justice Jackson, Terminiello stated, "I said, 'Fellow *Christians*' and I suppose there are *some of the scum got in by mistake*, * * * the *slimy scum.*" He accused the Jews of wanting to inject syphilis and other diseases into non-Christians. Jews were called Communistic.

at 17, 20. This Court held this speech to be within the protection of the First Amendment.

Thus the Court has on these four occasions held words libellous of racial and religious groups to be protected by the First and Fourteenth Amendments. It never held nor stated otherwise. Whatever the *dicta* of this Court on the constitutionality of criminal libel laws directed against libels of individuals, this Court never before passed upon whether criminal libel laws directed against members of groups are constitutional, but in each of the cases listed above—in *Cantwell,* in *Kunz,* in *Douglas,* in *Terminiello*—it consistently upheld the constitutional protection of free speech for words libellous of racial and religious groups, whatever the form of the statute under which the case arose.[5] The decision in the instant case thus necessarily overrules each of the four mentioned above. We submit that irrespective of whether or not such an overruling is now justified, it should not be done without any argument on the issue having been presented to the Court. We submit that a rehearing is most certainly necessary in this case.

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[5] The Court analogized the prevention of libellous utterances to that of obscene speech. We submit that the analogy is without foundation. Obscenity never touches upon the political or social issues of the day. *But group libel most certainly does.* Comments such as Beauharnais engaged in were, while thoroughly repulsive to the members of this Court and to all counsel involved in the case before it, none the less comments on the burning political and social issues of the day. The same cannot be said for obscenity.

CONCLUSION

This petition for a rehearing should be granted and the judgment below reversed.

Dated: New York, New York
May 9, 1952.

Respectfully submitted,

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Certificate of Counsel

ALFRED A. ALBERT, THURGOOD MARSHALL and HERBERT MONTE LEVY, counsel for petitioner in this case, hereby certify that this petition for rehearing is presented in good faith and not for delay.

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